

***United States Court of Appeals
for the Second Circuit***



APPENDIX

Docket
No. 76-1355

B
PFS

IN THE
United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

— vs. —

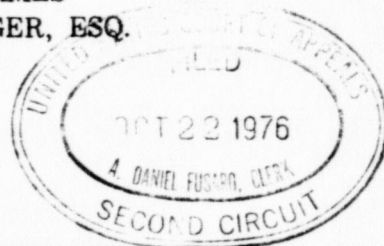
RICHARD JOSEPH TODARO,

Appellant.

On Appeal From The United States District Court
For The Western District of New York

APPENDIX
(Vol. I — Page 1a to 444)

LIPSITZ, GREEN, FAHRINGER,
ROLL, SCHULLER & JAMES
HERALD PRICE FAHRINGER, ESQ.
Attorney for Appellant
One Niagara Square
Buffalo, New York 14202
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PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Docket Entries	a
Indictment	7a
Notice of Appeal	10a
Notice of Motion	11a
Affidavit of Herald Price Fahringer	13a
Government's Answer to Defendant's Motions	57a
Sentencing Memorandum	68a
Case and Exceptions	1
Opening Statement by Mr. Endler	40
Opening Statement by Mr. Fahringer	53
Stipulation	130
Motions	650
Government's Proposed Requests to Charge	729
Defendant's Proposed Requests to Charge	741
Summation by Mr. Endler	790
Summation by Mr. Fahringer	842
Rebuttal by Mr. Endler	909
Charge of the Court	915
Request from Jury	963
Verdict	968
Motion for a Directed Verdict	975
Statement by Mr. Fahringer before Sentence	980
Sentence	990

WITNESSES FOR THE GOVERNMENT:

Ronald Hawley —

Direct	70
Cross	105

	Page
William L. Holmes —	
Direct	107
Recalled Direct	143, 516
Recalled Cross	168, 541
Redirect	174, 590, 605
Recross	603, 605
Robert L. Toney —	
Direct	123
Cross	127
Vincent Plumpton, Jr. —	
Direct	158
Leonard McGuire —	
Direct	179
Cross	185
Anthony Castellani —	
Direct	186
Cross	385
Redirect	415
Recross	421
Steve Castellani —	
Direct	445
Cross	496
Redirect	513
Recross	515
George Fellows —	
Direct	607
Cross	616
Redirect	631

Index to Government's Exhibits:

Ex. No.	Description	Pages	
		Marked	Received
1.	March 5, 1972 Search Warrant No. 1972-57, USA v. Richard Giglia	37	
2.	March 5, 1972 Search Warrant No. 1972-97, USA v. Kenmore News Shop	37	
3.	March 5, 1972 Search Warrant No. 1972-92, USA v. Richard Todaro . . .	37	
4.	March 5, 1972, Search Warrant No. 1972-93, USA v. 52 Bannard Ave. Tonawanda, N.Y.	37	
5.	March 5, 1972 Affidavit of S.A. Ronald Hawley for search warrants . .	37	
6.	February 16, 1972 Order of Judge Henderson, Application and Affidavit authorizing Electronic surveillances . .	37	
7.	Seven pieces of paper seized from Richard Giglia on March 6, 1972	37	
8.	One Piece of Paper seized from the Kenmore News Stand on March 6, 1972	37	
9.	Envelope and 9 Pieces of Paper seized from Kenmore News Stand on March 6, 1972	37	
10.	Feb. 22, 1972 edition of BASKETBALL	37	914
11.	Feb. 29, 1972 edition of BASKETBALL	37	
12.	March 7, 1972 edition of BASKETBALL	37	
13.	Jan. 30, 1973 Immunity Order for Richard Giglia	37	
14.	Jan. 30, 1973 Immunity Order for Anthony Castellani	37	

Index to Government's Exhibits (cont'd.):

Ex. No.	Description	Pages	
		Marked	Received
15.	Jan. 30, 1973 Immunity Order for Steve Castellani	37	
16 thru 58.	Electronic Tapes - Reels A-1 thru A-43	37	
59.	Composite reel of tape	37	636
60.	Transcript of composite reel of tape ..	37	637
61.	Index of conversations on Composite Tape	37	
62.	Voice I.D. of Det. Dragonette	444	
63.	Government's Request for Judicial Notice of Art. 225 of NY State Law ..	444	
64.	March 5, 1972 Edition of Ohio State News	444	
65.	Affidavit of Ronald Hawley, March 2, 1972		

Index to Defendant's Exhibits:

1.	Information vs. Anthony Castellani, Feb. 16, 1972	413	
2.	Information vs. Steve Castellani, Feb. 16, 1972	512	
2A.	Gold Sheet	563	607
3.	NY Post Newspaper, April 20, 1976 ..	563	607
4.	Football News Letter, Nov. 8, 1975 ..	563	607
5.	Line Sheet "National Sports Service" ..	563	607
6.	Dial-a-Winner, Hueys	563	607
7.	Courier Express clipping, Sept. 18, 1974	563	607
8.	Courier Express clipping, Jan. 1, 1972	563	607
9.	Courier Express clipping, Sept. 20, 1974	563	607

Index to Defendant's Exhibits (cont'd.):

Ex. No.	Description	Pages	
		Marked	Received
10.	Courier Express clipping, Oct. 3, 1975	563	607
11.	Courier Express clipping, Jan. 7, 1976	563	607
12.	Courier Express clipping, Oct. 2, 1975	563	607
13.	Courier Express clipping, Dec. 19, 1970	563	607
14.	Courier Express clipping, Dec. 29, 1970	563	607
15.	Courier Express clipping, Jan. 2, 1976	563	607
16.	Courier Express clipping, Oct. 6, 1973	563	607
17.	Courier Express clipping, Oct. 8, 1971	563	607
18.	Courier Express clipping, Oct. 1, 1971	563	607
19 and 20.	Photographs	616	
21 and 22.	Photographs	616	631

Index to Court's Exhibits:

1.	Government's Trial Brief, dated January 22, 1976	69
2.	Government's Proposed Voir Dire Questions	69
3.	Government's Requests to Charge ...	69
4.	Grand Jury Testimony of Special Agent Hawley, Feb. 6, 1973	69
5.	Report of Special Agent Hawley, March 6, 1972 (pp. 505-506)	69
6.	Report of Special Agent Hawley, March 6, 1972 (pp. 428-429)	69
7.	Report of Special Agent Hawley, March 6, 1972 (pp. 432-433)	69
8.	Report of Special Agent Ownby, March 6, 1972 (pg. 434)	69

Index to Court's Exhibits (cont'd.):

Ex. No.	Description	Pages	
		Marked	Received
9.	Grand Jury Testimony of Richard Giglia, January 30, 1973	69	
10.	Grand Jury Testimony of Anthony Castellani, January 30, 1973	69	
11.	Grand Jury Testimony of Steve Castellani, January 30, 1973	69	
12.	Grand Jury Testimony of Special Agent George Fellows, February 6, 1973	69	
13.	Report of Special Agent Fellows, March 6, 1972 (pg. 480)	69	
14.	Report of Special Agent Fellows, March 6, 1972 (pp. 481-482)	69	
15.	Report of Special Agent Fellows, March 6, 1972 (pg. 484)	69	
16.	Surveillance Report of Leonard McGuire, Feb. 28, 1972	69	
17.			
18.			
19.	Report of Special Agent William Holmes, March 8, 1976	444	
20.	Arrest Record of Steve Castellani		
21.	Notes of FBI Agent William Holmes ..	543	
22.	Defendant's Request to Charge	647	
23.	Defendant's Supplemental Request to Charge	961	
24.	Defendant's Request to Charge	961	

DOCKET ENTRIES.

CRIMINAL DOCKET
UNITED STATES DISTRICT COURTJOHN O. HENDERSON
John I. Henderson

U. S. Form No. 100 Rev.

62-1075-90

TITLE OF CASE
THE UNITED STATESATTORNEYS
For U.S.:vs.
RICHARD JOSEPH TODARO

Conspiracy to commit offenses against the United States by to conduct, finance, manage, supervise, direct and own an illegal gambling business, involving a horse and sports bookmaking operation, (Ct. 1), in violation of Section 371, Title 18, U.S.C.; unlawfully did conduct an illegal gambling business in the form of an unlawful sports bookmaking operation (Ct. 2), in violation of Section 1955, Title 18, U.S.C.; unlawfully did destroy certain property, namely flash-paper, in order to prevent its seizure, before the said property could be seized by Special Agent of the Federal Bureau of Investigation, who was then and there duly authorized by law to search for and seize the said property, (Ct. 3), in violation of Section 2232, Title 18, U.S.C.

For Defendant:

Herald P. Fahringer, Esq.

Offenses: 10/15/1970 - 3/30/1972
J.S. 2 mailed Clerk

3 Cts.

J.S. 3 mailed

Marshal

Violation

Docket fee

Title 18

Sec. 371, 1955, 2232

NAME OR
RECEIPT NO.

REC.

DISB.

DATE
1973

PROCEEDINGS

eb. 6 Filed Indictment
eb. 6 J.S. 3 made
eb. 6 The Court directs the issuance of a bench warrant. Issued warrant.
eb. 7 Filed Warrant. Executed 2/6/1973
eb. 7 Deft. present in Court with counsel, and being duly arraigned, enters a plea of not guilty. Bail set at \$10,00 Recog.; Motions ret. 2/26/73
eb. 7 Filed \$10,000 recog. bond
eb. 9 Filed Ct. Steno's minutes of 2/7/1973
eb. 26 Filed Deft's notice of motion for Discovery & inspection, delivery of all evidence etc. under the authority of Brady v. Maryland, Bill of Particulars, a hearing, disclosure, and hearings, etc. ret. 3/12/1973
eb. 26 The Court signs an order releasing prev. sealed affidavit and electronic surveillance Order for Deft's counsel. The Court sets motions ret. 3/12/1973 of the Court
eb. 26 Filed the Govt's application and Order that the Govt. turn over to counsel for the Deft., etc., copies of the wiretap order and related papers, and copies of search warrants 1972-92, 93, 94, etc. --HENDERSON, J.

(Over)

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REFERENCES

Oct. 15 Return date for Briefs - Adj. 11/4/1974
Oct. 29 Filed Govt's answer to the Defense Letter to the Court of 10/14/74

DOCKET ENTRIES.

U.S. vs. Richard Joseph Todaro
CRIMINAL DOCKET

Cr-1973-96

Sheet # 2

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
1974			
Oct. 29	Return date for briefs. Submitted.		
Nov. 4	Return date for briefs. Adj. 11/25/74 at 3:00 P.M. for oral argument.		
Nov. 25	Oral argument---adj. to 12/2/74 at 3:00 pm		
Dec. 2	Oral Argument - Submitted.		
Dec. 9	Filed the September 30, 1974 affidavit of Sol Lindenbaum, Former Assist. to the Former Atty. Gen., John Mitchell		
Dec. 9	Filed Decision and Order - Hearing re to validity of wiretap order is set for Friday - December 27, 1974, at 10:00 a.m.; The Govt. is directed to produce witness or witnesses necessary to explain how the application was reviewed and granted. Counsel may apply to the Court for more convenient time for appearance of witnesses--CURTIN, J.		
1975			
Jan. 13	Hearing re validity of wiretap order. Deft to file memorandum by 1/27. Govt to file answering memorandum by 2/3. Then to be considered submitted.		
Jan. 24	Filed Govt. motion for appropriate relief (copy) - Original filed in Cr-1973-256		
Jan. 27	Return date for MSXIXXXXXXX deft's memo; Govt's motion entitled motion for appropriate relief is adj. to 2/10/75 when Govt. shall file a brief in support of motion, setting forth procedural grounds for their argument that Court should rule on Govt's request to charge before trial. Oral argument on motion set for 2/18/75		
Jan. 29	Filed copy of letter to defense counsel from Robert C. Stewart, Attorney In Charge, Strike Force, dated 1/28/1975		
Jan. 31	Filed letter to Judge Curtin dated 1/30/1975, from Dennis P. O'Keefe, Department of Justice Atty.		
Feb 3	Return date for Govt's reply brief. Govt has filed brief. Submitted.		
Feb. 10	Filed Govt's memorandum (Orig. filed in Cr-1973-256)		
Feb 10	Return date for briefs--submitted.		
Feb 18	Motion by the Govt for Appropriate Relief. Motion denied. that the Court is satisfied,		
Feb. 25	Filed Decision and Order/that the authorization for the application for an eavesdropping order was made by the Atty. General and was approved in accordance with the procedures set forth in U.S. v. Giordano, etc.--CURTIN, J.		
May 5	Set trial date. Adj. to tomorrow morning at 9:30 am		
May 15	Filed Order that both sides are directed to file additional briefs directed to analysis of the sufficiency of the affidavits, calling the Court's attention in particular to recent authority bearing upon their sufficiency; Both sides are to file not later than June 23, 1975--CURTIN, J.		
June 23	Filed Govt's analysis of Probable cause for the electronic surveillance and search in the above captioned matter.		
June 30	Filed Deft's brief		

DOCKET ENTRIES.

7-1794

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
1975			
July 3	Filed application, affidavit, and order authorizing interception of wire communications re: John Cammilleri, Steve Castellani, Anthony Castellani, Sam Giglia, Richard Giglia, Joseph Silvagnia and others, sic by Judge John O. Henderson on February 16, 1972.		
July 3	Filed return of agent Ronald Hawley re: Interception of certain wire and oral communications		
July 3	Filed FBI #182-7, Cammilleri Wiretap, Envelope #2		
July 3	Filed FBI envelope containing original affidavit of agent Hawley, photocopy of agent Hawley's affidavit, and order of Judge John O. Henderson (undisclosed)		
July 3	Filed search warrants, affidavits, and returns for the following automobiles: (1) Volkswagen (2E 1684) (2) Ford (4B 6929) (3) Buick (7385 B) (4) Buick (9B 5369) (5) Buick (7B 982) (6) Buick (5E 9397) (7) Oldsmobile (AM 6448) (8) Chevrolet (5674 TE) (9) Corvette (5283 EO) (10) Cadillac (EH 4735) (11) Ford (8222 EG) (12) Chevrolet (4411 ED) (13) Buick (6578 LC) (14) Chevrolet (ED 2625)		
July 3	Filed search warrants, affidavits and returns for the following persons: (1) Richard Todaro (2) Robert Foster (3) James R. Swaney (4) James (5) Adelmo Dunge (6) Joseph Silvagnia (7) Richard Giglia (8) John (9) Steve Castellani (10) Anthony Castellani (11) Samuel Giglia (12) John Cammilleri (13) Thomas Sapienza (14) Guy Puglisi		
July 3	Filed search warrants, affidavits, and returns for the following locations: (1) 387 Ontario Street (upper) Bflo, NY (2) 79 Ramsdell Ave, Bflo, NY (3) 70 Tracy St (lower), Bflo, NY (4) 305 North Dr, (upper) Bflo, NY (5) Kenmore News Shop, 2743 Delaware Ave, Kenmore, NY (6) Riverside News Stand, 778 Tonawanda St, Bflo, NY (7) Safety Deposit Box #82, Bank of Bflo, Georgetown Branch, 5223 Sheridan Dr, Wmsvl, NY (8) 292 Huntington Ave, (upper), Bflo, NY (9) 94 Fruitwood Terrace (whole house) Wmsvl, NY (10) 305 North Dr, Bflo, NY (11) 122 Ramsdell (upper), Bflo, NY (12) 208 Victoria Blvd (lower), Kenmore, NY (13) Apartment 7, 476 Terrace Depew, NY (14) 1855 Kensington Ave, (house and office), Cheektowaga, NY (15) 119 Highland Ave (upper), Bflo, NY (16) 57 Fairfield, Tn, of Tonawanda (17) Foster's Quality Meats, 2837 Delaware Ave, Kenmore, NY (18) 584 Cornwall, Tn, of Tonawanda, NY (19) 52 Bannard Ave, Tn, of Tonawanda		
July 3	Filed Govt's answer letter dated 7/1/1975, informing the Court that the Govt. had received the defense brief of 6/30/75 relative to suppression in this case. The Govt. has no further response. They will rely on cases and authorities submitted earlier.		
July 10	Filed Govt's letter dated 7/9/75, in compliance with the Court's direction as to what evidence resulting from arrest & search warrants, the Government proposes to introduce at trial.		
Oct. 6	Filed Decision and Order Based upon the information derived from the affidavits, the U.S. Magistrate properly issued the search warrants. The motion of defendant to suppress is denied. -- CERTIN, J.		
Nov. 3 1976	Status report. Case ready for trial. trial 2-3-76		
Jan. 20	Filed Govt's notice of motion for a pretrial ruling on the definition of the word "conducts" pur. to Rule 12(b) of the FRCP, and etc., ret. 1/26/76 dated 1/20/76		
Jan. 21	Filed copy of letter to Atty. Paul J. Cambria, Jr., from Richard Endler, D.O.J., Atty., advising Mr. Cambria in advance of trial of the manner in which the Govt. intends to use at trial the wiretapped conversations contained in the one volume transcript, which was previously furnished to him, and etc., with a list of the con-		

DOCKET ENTRIES

v. Richard Joseph Todaro, CR-73-96

Sheet #3

CRIMINAL DOCKET

7-1996

DATE 1976	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
Jan. 21	versations which have been selected for trial, and accordingly, which are on the composite tape		
Jan. 22	Filed Cy. of letter dated 1/21/76 from Richard D. Endler, D.O.J., Atty., to Paul J. Cambria, Jr., Atty., for Deft., enclosing a copy of a two-page interview with Mr. Richard Giglia taken by Sp.-Agents Ronald Lee Hawley, and Dennis Gibbs, on March 6, 1972, also arrest records for Richard Giglia and Steve Castellani; a copy of the Govt's list of witnesses and prospective witnesses that it intends to call at a trial of the indictment herein.		
Jan. 22	Filed Government's list of Proposed Witnesses		
Jan. 22	Filed Three subpoenas - Richard Giglia, Anthony Castellani, and Steve Castellani, served 1/21/1976		
Jan. 26	Return of motions. Motions have been filed. Adj. to 1-29-76 for meeting.		
Jan. 28	Filed two subpoenas - Ottavio D. Derrico, Joseph J. Dragonette, served 1/27/76		
Jan. 30	Filed three subpoenas - Steve Castellani, Richard Giglia, Anthony Castellani, served 1/27/76		
Feb. 3	Filed 2 subpoenas for Richard Giglia, and Anthony Castellani both served on 2/3/76.		
Feb. 3	Richard Giglia & Anthony Castellani, witnesses, appear in Court pursuant to a subpoena. Court directs witnesses to appear on 4/1/76 or earlier if the trial commences before that time.		
Feb. 5	Filed letter date 2-4-76 from Richard Endler to Judge Curtin that April 1, 1976 would be fine to start trial.		
Feb. 11	Filed subpoena - Steve Castellani, served 2/11/1976		
Feb. 11	Witness Steve Castellani is present and ordered by the Court to appear, pursuant to a subpoena, which was served on him, on April 1, 1976 or whenever notified to appear.		
Mar. 22	Pre-trial conference held. Trial scheduled 4/20/76		
Apr. 22	Issued warrant of arrest for Joseph Giglia for failure to appear when subpoenaed.		
Apr. 20	Govt. moves case ready for trial, whereupon the jury is empanelled. Trial is hereby adj. until tomorrow at 9:30a.m.		
Apr. 21	Trial continues from yesterday with same appearance & jury Mr. Endler opens for the govt. Mr. Fahringer opens for the Deft. Witnesses for the Gvt. Ronald Hawley, William Homes, Vincent Plumpton, jury listens to the tapes. trial is adj. until tomorrow morning at 9:30 a.m.		

DATE		PROCEEDINGS	COURT'S FEES	
1976			PLAINTIFF	DEFENDANT
Apr. 22		Trial continues from yesterday with the same appearances and jury. On application of Govt. court directs issuance of bench warrant for the arrest of Richard Giglia, a witness. Trial is adj. until tomorrow morning at 9:30 a.m.		
Apr. 23		Trial continues from yesterday with the same appearances and jury. Trial is adj. until 2-26-76 at 11:00 a.m.		
Apr. 25		Trial resumes from 4-23-76 with same appearances & jury. Govt. rests. Deft. moves to dismiss the indictment. Court dismisses the Conspiracy count of the indictment and reserves decision on other counts. Trial is adj. until 2-28-76 at 9:30 a.m.		
Apr. 26		Filed Ct. Steno's transcript of proceedings of cross exam. of witnesses before Judge Curtin on 4/22/76 and 4/23/76.		
Apr. 28		Trial continues from 4/26/76 with same appearances and jury. Court rules on request to charge. The jury retires to deliberate upon their verdict. Jury to return tomorrow to continue their deliberation.		
Apr. 29		Jury returns to continue their deliberations. The jury returns with the following verdict: Guilty on Counts 2 and 3 as charged in the indictment. Sentence is deferred 6/7/76. Bail to continue.		
May 4		Filed Ct. Stenographer's transcript of the Court's Charge to the Jury		
May 5		Filed notice of motion for an order granting a judgment of acquittal ret. 5-24-76.		
May 10		Filed Government's answer to defendant's motion for a judgment of acquittal.		
May 13		Filed warrant of arrest for deft. executed 5/4/76		
June 14		Return date for deft's motions. Adj. 6/28/76 at the request of the deft.		
June 28		Return date for motions. Deft's brief due 7/9/76. Argument to be heard on 7/22/76 as well as sentence.		
July 9		Filed deft's preliminary statement.		
July 14		Filed Deft's preliminary statement.		

INDICTMENT.

In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

-vs-

RICHARD JOSEPH TODARO

NOVEMBER 1972 SESSION
X7567K

No. CR. 1973-96

Vio. 18 U.S.C. Sections
371, 1955 and 2232

FILED: 2/6/73

COUNT I

The Grand Jury charges:

THAT continuously between October 15, 1970 and March 30, 1972, in the Western District of New York, STEVE CASTELLANI, RICHARD GIGLIA, ANTHONY CASTELLANI, JOHN ZAK, and JOSEPH SILVAGNIA, named herein as co-conspirators but not indicted as defendants, and other persons whose exact identities are to the Grand Jurors aforesaid unknown, and the Defendant herein, RICHARD JOSEPH TODARO, did unlawfully conspire, combine and agree together and with each other to conduct, finance, manage, supervise, direct and own an illegal gambling business, involving a horse and sports bookmaking operation which violated the provisions of Article 225 of the Penal Law of the State of New York, in violation of Section 1955 of Title 18 of the United States Code;

OVERT ACTS

And, during the period aforesaid, the said Defendant and the said unindicted co-conspirators did commit the following overt acts in furtherance of the said conspiracy and in order to effectuate the object and purpose thereof, to wit:

1. On or about February 16, 1972, RICHARD JOSEPH TODARO had a telephone conversation with ANTHONY CASTELLANI over telephone number 877-4347;

INDICTMENT.

2. On or about February 19, 1972, RICHARD JOSEPH TODARO had a telephone conversation with STEVE CASTELLANI over telephone number 681-2509;

3. On or about February 20, 1972, RICHARD JOSEPH TODARO had a telephone conversation with RICHARD GIGLIA over telephone number 877-4347;

4. On or about February 27, 1972, RICHARD JOSEPH TODARO had a telephone conversation with ANTHONY CASTELLANI over telephone number 877-4347;

5. On or about February 28, 1972, RICHARD GIGLIA and JOSEPH SILVAGNIA were on the premises of the Kenmore News Shop located on Delaware Avenue in Kenmore, New York;

All of which was in violation of Section 371 of Title 18 of the United States Code.

COUNT II

AND THE GRAND JURY FURTHER CHARGES:

THAT continuously between October 15, 1970 and March 30, 1972, in the Western District of New York, the Defendant, RICHARD JOSEPH TODARO, unlawfully did conduct an illegal gambling business in the form of an unlawful sports bookmaking operation which violated the provisions of Article 225 of the Penal Law of the State of New York and which was managed, supervised, owned and directed by STEVE CASTELLANI and RICHARD GIGLIA;

All of which was in violation of Section 1955 of Title 18 of the United States Code.

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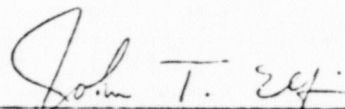
INDICTMENT.

COUNT III

AND THE GRAND JURY FURTHER CHARGES:

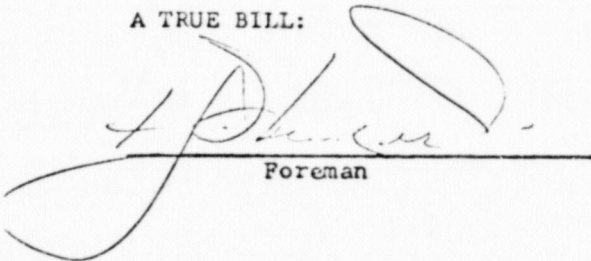
THAT on or about March 5, 1972, in the Western District of New York, RICHARD JOSEPH TODARO unlawfully did destroy certain property, namely flash-paper, in order to prevent its seizure, before the said property could be seized by Special Agent George Fellows of the Federal Bureau of Investigation, who was then and there duly authorized by law to search for and seize the said property;

All of which was in violation of Section 2232 of Title 18 of the United States Code.



JOHN T. ELFVIN
United States Attorney
Western District of New York

A TRUE BILL:



Foreman

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT

Western District of New York

United States of America

Docket Number

Cr. 1973-96

vs.

Richard Joseph Todaro

Honorable John Curtin

(District Court Judge)

NOTICE OF APPEAL

Notice is hereby given that Richard Joseph Todaro appeals to the United States Court of Appeals for the Second Circuit from the ☐ Judgment ☐ order ☐ other (specify) of conviction entered in this action on Aug 17 1976 (Date).

Herald Price Fahringer
(Counsel for Appellant)Date Aug 17, 1976

Address

One Niagara Square
Buffalo, New York 14202

To:

Richard J. Arcara
United States Attorney
United States Courthouse
Buffalo, New York 14202Phone Number (716) 849-1333

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

QUESTIONNAIRE

☒ I am ordering a transcript☐ I am not ordering a transcript

Reason:

☐ Daily copy is available☐ U.S. Attorney has placed order☐ Other. Attach explanation

TRANSCRIPT ORDER

Prepare transcript of

☒ Pre-trial proceedings☒ Trial☒ Sentence☒ Post-trial proceedingsDESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE).

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ☒ Method of payment ☒ Funds ☐ CJA Form 21

ATTORNEY'S signature

DATE

Aug 17 1976

NOTICE OF MOTION.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No.Cr. 1973-96

RICHARD JOSEPH TODARO,

Defendant.

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of
HERALD PRICE FAHRINGER, duly sworn to on the 23rd day of
February, 1973, and upon the indictment and all other proceedings
had herein, the undersigned will move this court on behalf of
the defendant, RICHARD JOSEPH TODARO, at a Criminal Term to be
held in the Federal Court House in the City of Buffalo, State of
New York, on the day of , 1973, at 10:00 in the
forenoon of that day or as soon thereafter as counsel can be
heard for orders granting the following relief:

- I. Discovery and Inspection pursuant to Rule 16
of the Federal Rules of Criminal Procedure.
- II. Delivery to the defendant of all evidence
favorable to him under the authority of
Brady v. Maryland, 373 U.S. 83.
- III. A Bill of Particulars pursuant to Rule 7(f)
of the Federal Rules of Criminal Procedure.
- IV. A hearing to determine the admissibility of
any statements taken from the defendant and
a motion to suppress them in the event they
were acquired illegally. Miranda v. Arizona,
385 U.S. 436.

NOTICE OF MOTION

- V. A hearing to determine the admissibility of certain evidence seized from the defendant and an order suppressing the evidence illegally seized pursuant to Rule 41 (e) of the Federal Rules of Criminal Procedure.
- VI. Disclosure of informants and disclosure of the use of informants.
- VII. A hearing to determine whether any evidence obtained from electronic eavesdropping will be used in this case and an order suppressing said evidence pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure.
- VIII. An order dismissing the indictment on the grounds that §1955 of Title 18 is unconstitutional.
- IX. An order granting inspection of the Grand Jury minutes pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure.
- X. An order dismissing the indictment based upon an inspection of those minutes.
- XI. An order dismissing one of the two counts in the indictment on the grounds that the government has misjoined two offenses in a single indictment; and an order dismissing count 3 of the indictment on the grounds that it has been misjoined with counts 1 and 2 of the indictment.
- XII. An order dismissing the indictment as a matter of law.
- XIII. An order granting such other and further relief as is just under all the circumstances of this case.

DATED: February 22, 1973
Buffalo, New York

Yours, etc.

HERALD PRICE FAHRINGER, ESQ.
Attorney for Richard Joseph
Todaro
One Niagara Square
Buffalo, New York 14202
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TO: ROBERT C. STEWART, ESQ.
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One West Genesee Street
Buffalo, New York 14202

AFFIDAVIT OF HERALD PRICE FAHRINGER.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD JOSEPH TODARO,

Defendant.

No. Cr. 1973-96
Vio. 18 U.S.C.
§§ 371, 1955 and
2232

STATE OF NEW YORK)
COUNTY OF ERIE)
CITY OF BUFFALO)

ss.

HERALD PRICE FAHRINGER, being duly sworn, deposes and
says:

1. He is an attorney duly licensed to practice law
in the State of New York. HERALD PRICE FAHRINGER is a member
of the firm of Lipsitz, Green, Fahringer, Roll, Schuller and
James with offices located at One Niagara Square, Buffalo, New
York.

2. On or about February 6, 1973 an Indictment was
returned in the United States District Court for the Western
District of New York charging RICHARD JOSEPH TODARO with violations
of §§ 371, 1955, and 2232 of Title 18 of the U.S.C. Annexed
hereto and marked Exhibit "A" is a copy of that indictment.
Annexed hereto and marked Exhibits "B" "B1" and "B2" are copies
of the applicable statutes. This omnibus motion is made on
behalf of the defendant, RICHARD JOSEPH TODARO.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

3. Shortly after indictment the defendant, RICHARD JOSEPH TODARO was duly arraigned in the United States District Court for the Western District of New York and entered a plea of not guilty to the charges contained in the annexed indictment and was given until February 26, 1973 to file motions addressed to the within indictment and the propriety of these proceedings.

4. The indictment contains three counts. Reduced to its essentials it in essence states:

COUNT I

That between October 15, 1970 and March 30, 1972, the defendant Richard Joseph Todaro did unlawfully conspire, with Steve Castellani, Richard Giglia, Anthony Castellani, John Zack and Joseph Silvagnia, to commit offenses against the United States, namely: to conduct, finance, manage, supervise, direct and own an illegal gambling business, in violation of the provisions of Article 225 of the Penal Law of the State of New York, in violation of §1955 of Title 18 of the United States Code; and

in furtherance of said conspiracy in order to effectuate it the defendants committed, the following:

OVERT ACTS

1. On or about February 16, 1972, Richard Joseph Todaro had a telephone conversation with Anthony Castellani over telephone number 877-4347.
2. On or about February 19, 1972, Richard Joseph Todaro had a telephone conversation with Steve Castellani over telephone number 681-2509.
3. On or about February 20, 1972, Richard Joseph Todaro had a telephone conversation with Richard Giglia over telephone number 877-4347.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

4. On or about February 27, 1972, Richard Joseph Todaro had a telephone conversation with Anthony Castellani over telephone number 877-4347.

5. On or about February 28, 1972, Richard Giglia and Joseph Silvagnia were on the premises of the Kenmore News Shop located on Delaware Avenue in Kenmore, New York; all of which was in violation of §371 of Title 18 of the United States Code.

COUNT II States in Essence:

That between October 15, 1970 and March 30, 1972, the defendant, Richard Todaro unlawfully did conduct an illegal gambling business in violation of the provisions of Article 225 of the Penal Law of the State of New York and which was managed, supervised, owned and directed by Steve Castellani and Richard Giglia all of which was in violation of §1955 of Title 18 of the United States Code.

COUNT III States in Essence:

That on or about March 5, 1972, Richard Joseph Todaro unlawfully did destroy flash paper, in order to prevent its seizure, and before it could be seized by Special Agent George Fellows who was then and there duly authorized by law to search for and seize the property; all of which was in violation of §2232 of Title 18 of the United States Code.

5. This affirmation is made in support of an application for a number of different forms of relief. The affidavit is divided accordingly under a number of different subheadings, such as "Discovery and Inspection," "Brady Material," etc. The subheadings are labeled A,B,C, etc. and under each of the subheadings the specific request for relief or allegations in support of said relief are numbered 1,2,3,4, etc. There follows an index of the various forms of relief requested, together with the page number upon which they appear.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

6. Whenever the term "defendant" is used, it refers to RICHARD JOSEPH TODARO, unless otherwise indicated.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

I N D E X

	<u>Page</u>
A. Discovery and Inspection	6
B. <u>Brady</u> Material	12
C. Bill of Particulars	17
D. Statements of the Defendant	24
E. Government Informer	26
F. Evidence Obtained Through Illegal Search and Seizure and/or Eavesdropping	29
G. Section 1955 of Title 18 is Unconstitutional	31
H. Inspection of the Grand Jury Minutes Pursuant to Rule 6(e)	34
I. Misjoinder of Offenses	39
J. Dismissal of the Indictment	42
K. Other Motions	44

For the reader's convenience the various branches of relief requested are tabbed along the right hand side of the pages of the motion with the letter "A" for Discovery and Inspection, "B" for Brady Material, etc. The exhibits referred to in the motion are tabbed at the bottom of the various pages, labeled Exhibit "A", Exhibit "B", etc.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

A. Discovery and Inspection

Defendant moves, pursuant to Rule 16 of the Federal Rules of Criminal Procedure, for an Order permitting him to inspect and copy or photograph the following items which are in the possession, custody or control of the government on the ground that they are material to the preparation of his defense and that his request for them is reasonable. It is further requested, pursuant to subdivision (e) of that rule, that any disclosures made by the government be made solely to the Court and to defense counsel, and that contents of any materials so disclosed not be made public or available to any other person, and that disclosure so ordered by this Court be made outside the presence of any representatives of the government. This request is made so that there is no violation of the attorney's work product rule through observation by the government of the manner in which the defense is prepared in this case. Thus, discovery is requested as to the following items:

1. All telephone company toll tickets reflecting any telephone calls which the government will allege were made in furtherance of the conspiracy.

2. All items taken from the defendants' homes, automobiles, places of business, or instrumentality by federal or state agents acting either with or without a search warrant.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

3. All reports of any agents of the government which relate statements made by the defendant before, during or after the conspiracy with respect to any of the matters contained in the indictment or related thereto.

4. All mechanical or electronic recordings and tapes that contain thereon any of the defendants' conversations which were made through the use of an electronic eavesdropping device.

5. All mechanical or electronic recordings and tapes of any statement or conversations which occurred at any place or through any facility owned or leased by the defendants or in which they had a proprietary interest, which in any way relates directly or indirectly to the defendant, RICHARD TODARO.

6. All memoranda, logs, reports, records, notes, summaries, transcriptions, TWX communications, airtels and written communications of any nature whatsoever which were made by any employee or agent of the government with respect to the statements or conversations to which reference is made in paragraphs 4 and 5 above.

7. A sample of each type of electronic eavesdropping device which was utilized to obtain the matters to which reference is made in paragraphs 4 and 5 above.

8. All documents, directives, orders, circulars or memoranda pertaining to the use of electronic eavesdropping devices and the information received therefrom which were made

AFFIDAVIT OF HERALD PRICE FAHRINGER.

or issued by any government agent with respect to the statements or conversations to which reference is made in paragraphs 4 and 5 above.

9. All documents, directives, orders or memoranda which purport to authorize the installation of any electronic device that was used as set forth in paragraphs 4 and 5 above.

10. All applications and orders secured under the authority of 18 U.S.C. §2518 pertaining to the electronic surveillance described in paragraphs 4 and 5 above, and pertaining to said intercepted telephonic conversations.

11. Copies of all authorizations and affidavits in support thereof, issued by the attorney general or the assistant attorney general designated by him.

12. The contents of all such statements and conversations thus overheard, and all memoranda prepared in connection therewith.

13. Copies of any and all reports or the results of any scientific tests or experiments made in connection with this particular case, including but not limited to any voice recordings, handwriting samples, photographs or other such material in the possession, custody or control of the government, including any reports on experts relating to the materials which form the basis of this indictment.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

14. Copies of any and all photographs, papers, documents, tangible objects or other material showing scenes, places of meetings, or any other area where it is claimed that the defendants conspired, or any other photographs, diagrams or other graphic representations which in any way relate to this indictment.

15. Copies of any photographs, pictures, or any other representation of the defendants allegedly meeting at any place or in each other's company in connection with any aspect of this case.

16. In the event these defendants testified before the grand jury which returned the indictment herein, a copy of their grand jury testimony is requested.

17. In the event any of the other defendants testified before the grand jury, a copy of their grand jury testimony is requested.

18. Any and all evidence of every kind or nature which may be in any way favorable to the defendants, which may be either exculpatory, or non-incriminatory, or as previously indicated, favorable to them in any manner which is in some way related to this case. (This application is also made under that heading which refers to Brady material.)

19. All information obtained through electronic surveillance conducted by any other governmental agency, whether

AFFIDAVIT OF HERALD PRICE FAHRINGER.

state or federal, of any of the defendants or any other persons who may have communicated with the defendants wherein conversations to which these defendants were a party were overheard; or conversations which were conducted on or in any of the defendants' premises, whether private or business, where other persons were overheard; or any instance where the defendants or any of the co-defendants were overheard.

20. All information or evidence obtained by any other police agency to which the government has had access which in any way relates to this indictment or the investigation which preceded the return of this indictment.

21. Any and all copies of any and all search warrants, arrest warrants, or eavesdropping warrants, and any and all supporting affidavits or depositions thereto, used in obtaining any of the information or evidence referred to in the preceding paragraphs and which in any way constituted a basis for the within indictment, whether issued by a state or federal agency.

22. The names and addresses of all expert witnesses employed by the People in connection with any of the counts of this indictment regardless of whether such witnesses will be called by the People to testify.

23. The names and addresses of all other witnesses interviewed by the People or any agent of the People in connection with any of the counts in this indictment, regardless of whether

AFFIDAVIT OF HERALD PRICE FAHRINGER.

such witnesses will be called by the People to testify.

24. The government be required to disclose the conviction records, if any, of any of the prosecution witnesses and co-defendants.

25. With respect to those items of which the Court in its discretion may not permit discovery by the defense, it is requested that the Court, in the interest of justice, and the administration of the courts, require the government to disclose the existence of such items and whether or not those items have been used in the investigation and preparation of this case, and further, whether or not the government intends to use such items at the trial.

26. Counsel specifically reserves the right to make any additional requests for material covered by Rule 16 at the time this motion is argued.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

B. Brady Material

1. The defendant moves this Court for an order compelling the prosecution to disclose and divulge to the defendant any evidence in its possession favorable to the accused including but not limited to statements or grand jury testimony, witnesses, books, papers, reports, photographs or any other tangible items of evidence in the custody or control of the prosecution or any government agencies working under the supervision of the government, favorable to the defense. This demand is made under the authority of Brady v. Maryland, 373 U.S. 83.

2. The principal impulse for the Brady rule grew out of an acknowledgment by the Supreme Court that a defendant's facilities for gathering evidence are disproportionate to that of the government's. Since most defendants have neither the man power nor the resources available to the government in its investigation of crime, the prosecution is obliged to share the proceeds of its discoveries with the defense where that evidence is favorable to the latter's cause. The duty of law enforcement agencies to conduct an impartial investigation and collect all the evidence relating to the commission of an offense is manifest. When a person is ultimately charged with a crime the findings of the state should be just as available to him as to the prosecution. The government's responsibility to the defendant is no less than the duty it owes to any other member of society for the investigation of crimes should be designed not only to

AFFIDAVIT OF HERALD PRICE FAHRINGER

convict the guilty but to free the innocent.

3. Upon information and belief a number of witnesses testified before the Grand Jury who gave evidence favorable to the defendant in this case. Under the Brady doctrine that evidence should be delivered to counsel. We suspect other witnesses may have been interviewed by the government and gave statements favorable to the defendant's cause. Those statements should be made available to the defense. Upon information and belief, various witnesses gave testimony which is either in the possession or control of the government which was favorable to the defendant, ~~RICHARD SCARPA~~. Upon information and belief, these witnesses have testified or are able to testify that the defendant is not a owner, director, supervisor, manager or that he does not finance or conduct an illegal gambling business.

4. It is imperative that this evidence be delivered before trial so that it might be effectively used. In order to effectively exploit any Brady material which may exist, it is essential that the defense be given this material far enough in advance of trial so that other investigatory leads may be pursued in sufficient time to permit a full preparation of the defendant's case.

5. If the defense is forced to wait until the time of trial, it may be too late for it to contact the witnesses, interview them, and arrange for their being subpoenaed on behalf of the defense. Therefore, it is imperative that the evidence

AFFIDAVIT OF HERALD PRICE FAHRINGER.

in the prosecution's file which is favorable to the defense be disclosed immediately so that arrangements can be made for these witnesses to be called during the course of this trial.

6. The disclosure and production requested here should be made without regard to whether or not the evidence to be disclosed and produced is deemed to be admissible at the trial of this action. The disclosure and production should include, but not be limited to, the following evidence:

- (1) Any written or recorded statements, admissions or confessions made by any witness or co-defendant which may be exculpatory, non-incriminatory, or otherwise favorable to this defendant, or any summaries, synopses, notes, memoranda or resumes thereof, regardless of whether such statements were reduced to writing and regardless of whether the prosecution intends to use such statements at trial.
- (2) The names and addresses of such witnesses and the names and addresses of any other witnesses who might be favorable to the defendant.
- (3) Any and all written statements made by any witnesses who have been interviewed by an agent for the prosecution in connection with the subject matter in this case and whom the prosecution presently does not intend to call at trial, regardless of whether such statement has been signed or otherwise adopted or approved by said witness; or any stenographic, mechanical, electrical, or other recording, or a transcript thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent for the prosecution and recorded contemporaneously with the making of such oral statement.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

- (4) The names and addresses of all persons who may have some knowledge of the facts of the present case.
- (5) The criminal records or any list or summary reflecting the criminal records of all persons the prosecution intends to call at trial.
- (6) Any notes, memoranda, summaries, reports or statements of any kind prepared by agents of the prosecution in connection with the investigation of this case.
- (7) Any notes, memoranda, summaries, reports or statements of any kind prepared by persons other than agents for the prosecution in connection with the investigation of this case.

7. This rule announced by the United States Supreme Court in Brady v. Maryland, supra, and which the defendant asks this court to enforce, should impose no hardship on the prosecution in that we are only asking for that evidence which is favorable to the defense, and thus, if it involves witnesses, it is expected that they would be friendly toward us. Thus, the exaggerated claims usually made by the prosecution that witnesses will be threatened is inappropriate here.

8. In order to equitably implement this rule, it is requested the prosecution's file be produced in court and examined by the court and defense counsel so that a fair determination can be made of that material which is favorable to the defense. The decision of what material exists in the prosecution's file favorable to the defense cannot be left to the prosecution, but must be supervised by the court.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

9. Counsel specifically reserves the right to make any additional requests for material covered by Brady v. Maryland, supra, at the time this motion is argued, or at such other time as the existence of such material shall become known to counsel or the defendant.

10. It is respectfully requested that the Court specifically admonish the prosecution that they have a duty to disclose any evidence favorable to the defendant and that such duty is a continuing duty.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

C. Bill of Particulars

Pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, the defendant moves for an Order compelling the prosecution to file with the Court and serve upon the defendants a Bill of Particulars relating to this indictment and particularly setting forth the following:

With Respect to Court I

- (1) State where, other than in this jurisdiction, the conspirators agreed with each other to violate the sections.
- (2) State the names and addresses of those other participants in the conspiracy whose names were unknown at the time of the filing of the indictment, but have subsequently become known, and so state with respect to any participant whose name becomes known subsequent to the disposition of this motion but prior to the end of the trial herein.
- (3) State the approximate date upon which the defendants are alleged to have become members of the conspiracy.
- (4) State the names of the other conspirators with whom the defendants are alleged to have conspired or dealt with directly.
- (5) State the name, present street address and street address at the time of the alleged participation in the conspiracy, of all co-conspirators, including co-conspirators who were not known to the prosecution at the time the indictment was returned, but since have become known, and so state with respect to any participant whose name becomes known subsequent to the disposition of this motion but prior to the end of the trial herein.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

- (6) State the name and street address at the time of the alleged participation in the conspiracy and present street address, of all alleged co-conspirators not named in the indictment but known to the prosecution at the time of the indictment.
- (7) State the earliest date any documentary proof in the custody or control of the prosecution links the defendant to the claimed conspiracy.
- (8) State the period of time in which it is claimed the defendant was a participant in the claimed conspiracy.
- (9) State approximately when, where, and in what manner the defendant became a member of the conspiracy.
- (10) State approximately when and where and in what manner the other defendants became members of the claimed conspiracy.
- (11) State with which alleged co-conspirators it is claimed the defendant entered into the claimed conspiracy.
- (12) State the date or dates, times and places (by street address, if known), of the making of the claimed conspiracy.
- (13) State the time, place, persons present and the nature of any overt acts which could have been included in the indictment but were not and to which acts the prosecution intends to offer evidence upon the trial of this indictment.
- (14) State whether or not the overt acts alleged were had at the instance of the prosecution, its employees, agents or servants, or at the instance of any official, agent or servant of any state of the United States or a political subdivision thereof.
- (15) State the last date upon which any act in furtherance of the conspiracy was performed by any of the conspirators, whether named in the indictment or not, and state further the nature of the acts and by whom they were performed.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

- (16) State whether each of the witnesses who testified before the grand jury testified solely on the basis of his own personal knowledge and if not, state further (a) who it was that gave the hearsay testimony, (b) the name of the person with actual knowledge of the facts as to which the hearsay testimony was given, and (c) the reason why the prosecution failed to produce before the grand jury the person with actual knowledge of those facts.
- (17) State the name of any defendant who, either personally or through counsel, has cooperated or is cooperating with the prosecution in connection with this case and whom the prosecution expects to seek to sever out of the case and call as a witness upon the trial.
- (18) State whether the prosecution has in its possession or control any reports or any statements made by the defendant during the period covered by the indictment and up until the filing thereof to any person who at the time the statement was made was an agent of the prosecution.
- (19) State whether the defendant is charged as an aider and abettor, and if so, state how defendant is claimed to have aided and abetted the alleged offense or offenses.
- (20) State the name and address of all persons who it will be claimed by the prosecution acted with or in connection with the defendant.
- (21) State with particularity the manner in which the claimed offense or offenses were performed.
- (22) State the act or acts alleged to have occurred which constitute the offense set forth in the indictment.
- (23) Set forth the time of day and place where the act or acts constituting the offenses allegedly took place.
- (24) State the names and addresses of all persons who had knowledge of the facts relevant to the transactions in any way connected with the offenses charged, and in particular state the

AFIDAVIT OF HERALD PRICE FAHRINGER.

names of any other persons who the prosecution will claim were the victims of the offense or offenses relating to this indictment.

- (25) State the date, the hour and the place the various offenses charges are claimed to have occurred.
- (26) State whether any person was offered, promised or obtained any money or property by reason of the offenses charged in the indictment; if so, state (a) the identity of the person who offered, promised or received the money or property, (b) the amount of money or nature and value of the property offered, promised or obtained, (c) the name of the person or persons offered, promised or transferred the money or property, (d) the date said money or property was offered, promised or received, and (e) the name and present street address of any person claimed to be present at the time of any payment offered or promised.
- (27) State the act or acts it will be claimed the defendant did perform or attempted to perform to facilitate the performance and carrying on of these offenses charged.

With Respect to Court II

- (1) State in what manner it is claimed that the defendant, RICHARD JOSEPH TODARO, unlawfully conducted an illegal gambling business.
- (2) State specifically on what days between October 15, 1970 and March 30, 1972 it is claimed that the defendant committed the acts charged in the indictment.
- (3) State specifically what illegal gambling business it is claimed the defendant conducted in violation of Article 225 of the Penal Law of the State of New York.
- (4) State specifically the precise section number of Article 225 of the Penal Law of the State of New York it is claimed the defendant violated.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

- (5) State how or in what manner it is claimed that Steve Castellani and Richard Giglia managed, owned, directed or supervised the alleged illegal gambling business referred to in Count II of the indictment.

With Respect to Court III

- (1) State specifically the date, time and place it is alleged that the defendant, RICHARD TODARO, unlawfully did destroy certain property, namely, flash paper allegedly to prevent its seizure.
- (2) State specifically where it is claimed that the defendant, RICHARD JOSEPH TODARO, unlawfully destroyed the flash paper referred to in Court III.
- (3) State specifically the circumstances under which it is claimed that FBI Agent George Fellows was duly authorized to search for and seize the property referred to in Count III.
- (4) State specifically how or in what manner it is claimed that the defendant, RICHARD TODARO, unlawfully destroyed the property referred to in Count III.
- (5) State specifically the facts and/or circumstances which led to the belief that the defendant allegedly destroyed the property referred to in Count III to prevent its seizure by Agent George Fellows.

With Respect to the Entire Indictment

- (1) State whether any other persons named as participants in any of the transactions or acts described in this indictment solicited, importuned or requested the defendant to commit any of the acts with which he is charged.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

- (2) State whether any of such persons acted in any way on behalf of, or after intervention by, any representative of the government during any part of the transactions or acts charged in this indictment.
- (3) State the names and addresses of those who so acted.
- (4) State the number of persons constituting the Grand Jury which returned this indictment and the number present when the indictment was returned.
- (5) State the number of Grand Jurors voting to return the indictment.
- (6) State whether the court supplied information to the Grand Jury regarding the statutes of Title 18 of the United States Code construed in this case and, if so, the precise nature of that information.
- (7) State whether any legal advice was given by the United States Attorney to the Grand Jury and if so set forth the transcript of this legal advice, if recorded, or the detailed substance of this legal advice if unrecorded.
- (8) State whether the People have in their possession or control any reports of any statements made by the defendant during the period covered by the indictment or up until the filing thereof to any person who, at the time the statement was made was an agent of the People.
- (9) State whether each of the witnesses who testified before the Grand Jury testified solely on the basis of his or her own knowledge and if not, state further (a) who it was who gave the hearsay testimony, (b) the name of the person or persons with actual knowledge of the facts as to which the hearsay testimony was given and (c) the reason why the prosecution failed to produce before the Grand Jury the person or persons with actual knowledge of those facts.

AFFIDAVIT OF HERALD PRICE FAHRINGER

- (10) State whether the indictment in its final form was drafted by the United States Attorney's office before the Grand Jury voted to return the within indictment.
- (11) State whether the indictment in its final form was either exhibited or read verbatim to each of the Grand Jurors who voted to return it before that vote was taken.
- (12) State whether an agent of the government summarized the testimony and/or evidence before the Grand Jury or whether individual fact witnesses appeared before the Grand Jury and testified before the same.

1. The information sought to clarify the indictment is within the particular knowledge of the United States Attorney and cannot be obtained by means other than legal process.

2. The information requested is not of an evidentiary nature and, without it, the defendant cannot adequately prepare or conduct his defense.

3. At the time of the hearing of this motion for a Bill of Particulars, counsel for the defense may request other details to be furnished which are relevant to this indictment and which are necessary for the proper preparation of this defense.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

D. Statements of the Defendant

1. In the event the prosecution will offer in evidence against the defendant any statements, either oral or in writing, a copy of those statements has already been requested. However, in the event the prosecution has such a statement but will not offer it in evidence, there is still the issue of whether any leads were obtained as a result of the acquisition of that statement. Therefore, a full and complete hearing is requested to investigate the facts and circumstances surrounding the acquiring of any such statements.

2. A hearing is required to determine whether the statement was taken in the absence of defense counsel; whether it was made before or after the defendant's arraignment, and whether the giving of any statement was preceded by the Miranda warnings.

3. In the event the government will offer in evidence against the defendant any statements, a full and complete hearing is requested to investigate the facts and circumstances surrounding the taking of a statement from the defendant or any statements which were acquired as a result of eavesdropping.

4. A hearing is necessary in order to determine whether the statement was acquired or overheard in such a manner as to violate the defendant's rights under the United States Constitution or United States statutes or under cases decided by our federal courts.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

5. A hearing is also required in order to determine whether any leads or further information was acquired as a result of the taking of a statement from the defendant.

6. If any statement was taken in violation of the defendant's rights and privilege against self-incrimination as construed by our federal courts, we will ask that it be suppressed at the conclusion of the hearing.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

E. Government Informer

1. The defendant requests the government to disclose whether any government informer supplied evidence to the government either before, during the course of, or after this alleged conspiracy so that the defendant may properly move to suppress that evidence on the grounds that it was illegally obtained.

2. Therefore, the defendant demands to know now whether there were any government informers, acting as agents of the government, who were obtaining information concerning this alleged conspiracy and supplying it to the government.

3. It may be that those government informers will not be used as witnesses in this case, but the defendant is entitled to know about the source of this information because it may have led to other evidence which will be offered in the trial, or may have been contaminated by the illegal original source which the defendants have a right to challenge.

4. It is urged that this evidence may have been acquired in a way that violates the defendant's rights under the Fourth and Fifth Amendments to the United States Constitution.

5. So that there can be no mistake about the defendant's request here, it is urged that under the decisional law of the United States Supreme Court, this defendant is entitled to have the government disclose whether any agent, employee, special employee or informer, paid or unpaid was at the direction of

AFFIDAVIT OF HERALD PRICE FAHRINGER

any federal law enforcement agency, or state law enforcement agency, used or instructed to gather evidence or information and/or to participate in any way in the activities which form the basis of this indictment. If such information was acquired through state agencies, the defendant is entitled to know that information.

6. In the event such infiltration by an officially directed agent or informer was employed, deponent believes that the use of the information obtained by such agent or employee or any information derived directly or indirectly from him is in violation of the defendant's rights under the Fourth and Fifth Amendments to the United States Constitution and, therefore, a hearing is authorized to fully explore these violations of the defendant's constitutional rights.

7. In this regard, the defendant requests to know whether any information concerning this alleged conspiracy was supplied to the government from any state or local enforcement agency. The reason for this request of disclosure is to permit counsel for the defendant to examine into the constitutional procedures followed by any cooperating state police agencies who may have furnished information to the federal authorities in connection with the prosecution of these alleged offenses.

8. The defendant requests that the government disclose whether any of the co-defendants will be used as witnesses against the defendant or were used in any capacity prior to the return

AFFIDAVIT OF HERALD PRICE FAHRINGER.

of this indictment to gather evidence against the other defendants. This information must be supplied to the defendant at this time in order to protect his rights under the Fourth, Fifth and Sixth Amendments to the United States Constitution. Such information is necessary in order that this defendant does not confer with any such persons or discuss his trial strategy with them.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

F. Evidence Obtained Through Illegal
Search and Seizure and/or Eavesdropping

1. Counsel, through motions for discovery and inspection and for a Bill of Particulars, has asked the government to disclose whether or not any evidence has been acquired through search and seizure or electronic eavesdropping and has requested the government to produce any search warrants, arrest warrants or eavesdropping warrants which may have been used to acquire such information, and is otherwise continuing his investigation into the possibility that the People will use evidence acquired unlawfully or improperly against the defendant.

2. Your deponent has contacted the United States Attorney's office and has been informed that search warrants and eavesdropping warrants were issued in connection with this case. At the time of this deposition those warrants were under a government protective order and were not available to the defendant or counsel. Your deponent has been informed that the protective order will be removed at a time subsequent to the filing of these motions, and copies of all warrants and supporting depositions thereto will be given to the defendant.

3. Therefore, the defendant reserves his right to assert any and all constitutional claims relevant to these warrants and the supporting depositions thereto at the time he is given copies of these documents.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

4. In the event any of the evidence was acquired by the government through unlawful search and seizure or electronic surveillance, the defendant intends to move to have it suppressed

5. Additionally, since the government has charged each of the defendants with conspiracy to violate §1955, each defendant has standing to complain of the search of a co-conspirator. In other words, since the government claims that during the course of the conspiracy each defendant was acting as an agent of the other and were, in fact, partners in the offense, it logically follows, under such an agency relationship, that each defendant has standing to complain of the other defendant's search.

6. Consequently, this defendant will move to suppress the evidence secured either from himself or from another co-defendant on the ground that it was unlawfully acquired in violation of his or the others' Fourth Amendment right against an unreasonable search and seizure. Therefore, the defendant RICHARD TODARO, must be supplied with copies of search and seizure warrants and eavesdropping warrants issued for himself or for the other co-defendants so that he may adequately protect his constitutional rights.

*AFFIDAVIT OF HERALD PRICE FAHRINGER.*G. Section 1955 of Title 18
is Unconstitutional

1. Under the Ninth and Tenth Amendments of the United States Constitution, the definition and prosecution of local intrastate crime are reserved to the states. Through §1955, the federal government attempts to exert jurisdiction over gambling activities, which in the case at bar is purely local and has absolutely no effect upon interstate commerce. Consequently, §1955 represents an unconstitutional exercise of power by the federal government over an area reserved for the states. This section is both unconstitutional on its face and as applied in the case at bar.

2. The gambling activities described in this indictment which are purely intrastate, have no effect, or at least no substantial effect, on interstate commerce. The statute is further unconstitutional because it does not require that the proscribed activities have an impact of any kind upon interstate commerce. Consequently, the activities described in this indictment fall outside that class of conduct as to make the federal government's regulation of them an appropriate means to attain a regulation of interstate commerce.

3. Section 1955 of Title 18, a copy of which is annexed to this motion and marked Exhibit "B1" simply provides, "whoever conducts . . . an illegal gambling business . . . " shall be punished. No place in the section do the words willfully

AFFIDAVIT OF HERALD PRICE FAHRINGER.

knowingly or any of their counterparts appear. Thus, a person can be found guilty under §1955 of a federal felony without knowingly committing any of the acts proscribed under that section. The element of scienter is completely lacking from the statute as is the requirement of specific intent, traditionally associated with any offense which is a felony.

4. Section 1955 is further unconstitutional because it is not limited in its reach to only those activities which by some rationale have an impact on commerce. It in effect reaches all gambling business between various persons, regardless of the number of transactions made or whether those persons act independently or in association with others, whether an interstate facility or instrumentality is used or whether the transaction or operations affect commerce. The statute is constitutionally deficient because it requires no showing by the government of any federal interest in the activities proscribed, but at the same time, opens the federal courts to a mass of purely local matters which the states have traditionally had jurisdiction over.

5. Under the commerce clause of our federal constitution, federal jurisdiction can only be invoked where the activities sought to be proscribed exerts a substantial economic effect on interstate commerce, or is so co-mingled with or related to interstate commerce that all such activities must be regulated if the interstate commerce is to be effectively

AFFIDAVIT OF HERALD PRICE FAHRINGER.

controlled. Section 1955 of Title 18 cannot be justified on either of these grounds.

6. Section 1955 of Title 18 is also unconstitutional because it elevates a state offense which is a misdemeanor to a felony under federal law.

7. For all these reasons, §1955 should be declared unconstitutional on its face, or in the alternative, should be declared unconstitutional as applied in this case. A hearing is requested to develop any and all facts which are needed by this court in order to declare this section unconstitutional.

*AFFIDAVIT OF HERALD PRICE FAHRINGER.*H. Inspection of the Grand Jury
Minutes Pursuant to Rule 6(e)

The defendant moves the Court, pursuant to the Federal Rules of Criminal Procedure, for an order requiring the government to produce to this defendant and his attorney for inspection and copying the transcripts of the testimony of all witnesses who appeared before the Grand Jury in respect to the subject matter of the indictment in this case, and in support thereof aver as follows:

1. The indictment in this case was returned without any preliminary hearing having been afforded the defendant and purports to be based upon the testimony of persons who appeared and testified before the Grand Jury.

2. If this defendant had been afforded a preliminary hearing, he would have been confronted by those persons upon whose testimony the government intends to rely to support the charges which have been made against him in this case, and he would have had an opportunity to examine and inspect all documents presented by the government to the Grand Jury and deemed by the government to be relevant to the charges set forth in the indictment.

3. The testimony of the aforementioned persons was taken stenographically before the Grand Jury and transcripts thereof are now in the possession of the United States Attorney for the purpose of preparing the case for trial and for use

AFFIDAVIT OF HERALD PRICE FAHRINGER.

in presenting evidence at the trial of the case.

4. Based upon the investigation thus far conducted by defendant's counsel, there is no legal evidence sufficient to establish as a matter of law that any cause exists for accusing the defendant of the crimes charged in this indictment, and there was insufficient legal evidence adduced before the Grand Jury to sustain the charges presented by this indictment.

5. Under all of the circumstances of this case, an inspection of the minutes of the Grand Jury is absolutely necessary for the purpose of ascertaining whether or not sufficient evidence was adduced before that body to establish that the defendant was involved in the crimes charged. In the alternative, if leave to inspect the Grand Jury minutes by your deponent is denied, then the court is respectfully requested to review the Grand Jury minutes and dismiss the indictment because of insufficient legal evidence before that body.

6. In particular, upon information and belief, an inspection of the Grand Jury minutes will reveal that the evidence failed to prove that the defendant violated the provisions of Article 225 of the Penal Law of the State of New York, such proof being necessary in order to support a violation of §1955 of Title 18 of the United States Code. Therefore, the court is respectfully requested to review the Grand Jury minutes and dismiss the indictment because of insufficient legal evidence before that body.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

7. In order to properly prepare his defense there is compelling necessity and particularized need that the defendant be afforded an opportunity to inspect and copy the transcripts of the testimony of all witnesses who appeared before the Grand Jury whom the government intends and expects to call, or has reason to believe may be or will be called, to testify in support of the government's case or any aspects thereof. The defendant is entitled to the discovery herein requested in order that he may properly prepare his defense; in order that he may be informed of the nature of the evidence upon the government intends to rely; to enable his counsel to prepare for cross examination of such persons; and because the testimony sought to be discovered may be material to the impeachment of government witnesses at trial.

8. Upon information and belief, the only fact witnesses called before the Grand Jury gave evidence either exculpatory or favorable to the defense. We have reason to believe that the evidence which forms the basis of the indictment was summarized by a special agent of the FBI or other agents of the government. This practice of presenting evidence through a conduit witness in the form of hearsay evidence has been repeatedly criticized by appellate courts. Despite these repeated warnings, prosecutor's continue to exploit this unfair advantage. As indicated above, we suspect the Grand Jury was not advised that the evidence upon which this indictment is based

AFFIDAVIT OF HERALD PRICE FAHRINGER.

was purely hearsay. Consequently, a full judicial investigation into this constitutional complaint is necessary.

9. It is further urged that disclosure of the minutes before the Grand Jury will be in no way prejudicial to the government in this case, but will serve the best interests of justice by revealing to this court the true nature of the evidence before the Grand Jury and that it was insufficient as a matter of law to sustain these charges.

10. The defendant moves that the entire transcript of the Grand Jury proceedings be produced so that counsel may ascertain if there are grounds to dismiss the indictment based upon the Grand Jury proceedings. It is believed that an inspection of the Grand Jury minutes may reveal that the statute is unconstitutional as it is being applied to the defendant and there was no evidence linking him to the offense charged. Inspection is further necessary to determine if the Grand Jury proceedings were properly conducted.

11. An inspection of the Grand Jury minutes is constitutionally required in this case to determine whether any evidence derived from any illegal sources such as unauthorized electronic surveillance or illegal use of an informer was presented to the Grand Jury.

12. Wherefore the defendant, RICHARD JOSEPH TODARO, was given an inadequate preliminary hearing, and therefore

AFFIDAVIT OF HERALD PRICE FAHRINGER.

respectfully requests this court to allow inspection of the Grand Jury minutes or in the alternative for the Court to inspect the Grand Jury minutes and on the basis thereof dismiss the indictment herein.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

I. Misjoinder of Offenses

1. The government has misjoined in a single indictment the charges of conspiring to violate §1955 together with a substantive violation of that section. For it is well settled that when a substantive offense requires the cooperation of two or more persons, then those same individuals cannot be charged and convicted of conspiring to commit that offense if in fact that offense has been consummated.

2. Here the Grand Jury has concluded that there was in fact a consummated violation of §1955 which requires the cooperation of five or more persons. Since the Grand Jury's determination is clearly reflected within the indictment herein, the defendant cannot also be charged with conspiring to violate that section. Since cooperation is an essential element of the violation of §1955, he cannot be guilty of also conspiring to violate that section which in effect involves exactly the same conduct.

3. Consequently, the defendant will be subjected to the jeopardy of double punishment for the substantive offense itself contemplates an illegal agreement as does the conspiracy count. Parties who act in concert under the substantive offense cannot also be charged with acting in concert under a conspiracy count where an essential element of the substantive offense involves acting in concert.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

4. For all of these reasons, either the conspiracy count of the indictment or the substantive count must be dismissed or the government must make an election as to which count they prefer to try. Accordingly, an appropriate order should be entered by this court either dismissing one count or the other or requiring the government to elect to proceed to trial on only one count.

5. Pursuant to the Federal Rules of Criminal Procedure 8 and 14 the defendant further moves for a severance of count 3 of the indictment in that such count constitutes a misjoinder of offenses in one indictment.

6. Counts 1 and 2 of the indictment deal exclusively with the alleged concerted gambling activities of the several named co-defendants.

7. Count 3, however, pertains only to the defendant, RICHARD TODARO, and is centered solely around his alleged personal conduct.

8. Clearly, counts 1 and 2 deal with a totally unrelated series of acts or transactions which are not only remote in circumstance from the remaining count of the indictment, but are also remote in time of occurrence. Counts 1 and 2 concern conduct which allegedly transpired between October 15, 1970 and March 30, 1972, and count 3 deals exclusively with conduct that occurred on or about March 5, 1972. Moreover,

AFFIDAVIT OF HERALD PRICE FAHRINGER.

the legal theories upon which the first two counts are based are totally different from those underlying count 3. Similarly, the proof necessary to resolve the issues encompassed in the first two counts will be substantially different from that necessary to resolve the issues in the last count.

9. The complexities inherent in the resolution of the factual and legal issues contained in the first two counts of the indictment presents a very difficult task for the court, counsel, and the jury. The addition of count 3 which is in no way similar in time, place, subject, fact or law would result in an alarming injustice. Therefore, the appropriate order should be entered by this court severing count 3 of the indictment from counts 1 and 2.

*AFFIDAVIT OF HERALD PRICE FAHRINGER.**J. Dismissal of the Indictment*

1. The first two counts of the indictment are insufficient as a matter of law and must be dismissed pursuant to Rule 7(c) of the Federal Rules of Criminal Procedure.

2. In order to properly defend against a criminal charge the defendant must be fully aware of the nature of the offense he is accused of committing. The fundamental purpose of FRCP 7(c) is to insure that an indictment contains a plain, concise and definite written statement of the essential facts, constituting the offense charged.

3. In the instant case the indictment merely states, in a conclusory fashion, that the defendant was involved in an illegal gambling business in violation of Article 225 of the Penal Law of the State of New York.

4. It is obvious that such a statement is in no way plain, concise or definite in that Article 225 contains at least nine different sections all involving different crimes relating to gambling. Therefore, in order for the defendant to adequately prepare his defense he must be apprised of the specific illegal conduct it is claimed he engaged in in violation of a specific section under Article 225 of the Penal Law. The necessity of this is clear in view of the fact that an essential element of a crime charged under §1955 of Title 18 is that the defendant be engaged in an illegal gambling business in violation of the law of a state or political subdivision.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

5. Therefore, counts 1 and 2 of the indictment are insufficient on their face and must be dismissed.

6. Moreover, counts 1 and 2 of the indictment must be dismissed as a matter of law in that the alleged conduct of the defendant does not fall within the proscriptions of §1955 of Title 18 of the United States Code.

7. Upon information and belief, the evidence before the Grand Jury, and indeed the basis of the government's case, is that the defendant allegedly supplied the "line" or "odds" on various sporting events.

8. Assuming, but not in any way conceding, that the defendant did in fact calculate "odds" on various sporting events, it is submitted that such conduct is not illegal under the laws of New York State. In fact, numerous radio and television stations throughout the nation calculate "odds" and "point spreads" of various sporting events by the use of computers, and broadcast such information daily.

9. Clearly, this alleged conduct is not in violation of any of the laws of New York State, and in the absence of a violation of a state law a charge under §1955 of Title 18 may not stand. Therefore, counts 1 and 2 of the indictment must be dismissed in that the alleged conduct of the defendant is not proscribed by that section.

AFFIDAVIT OF HERALD PRICE FAHRINGER.

K. Other Motions

1. At the time this motion is argued, the defendant respectfully reserves the right to request further details in the form of either bills of particulars or in the nature of discovery, as the need for that information becomes apparent.

2. The defendant, RICHARD TODARO, also reserves the right to make any and all motions which may be necessitated by reason of the granting of certain relief requested herein. And further, if facts should develop which require the making of other motions, counsel respectfully reserves the right to make these motions.

WHEREFORE, it is respectfully requested that this court grant the relief requested in the various branches of this motion and accord this defendant, RICHARD TODARO, such other and additional relief as is just under all the circumstances of this case.



HERALD PRICE FAHRINGER

Sworn to before me this
24th day of February, 1973.

GOVERNMENT'S ANSWER TO DEFENDANT'S MOTIONS.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

RICHARD JOSEPH TODARO

CR. 1973-96

THE UNITED STATES OF AMERICA, by and through John T. Elfvin, United States Attorney for the Western District of New York, and Robert C. Stewart, Department of Justice Attorney, hereby makes the following response to Defendant's motions filed on or about February 27, 1973, to wit:

A. DISCOVERY AND INSPECTION

1. The Government has no objection to counsel inspecting and photographing toll tickets. The Government does, however, object to making this or any other disclosure out of the presence of a government representative as requested by counsel.
2. Counsel may inspect all items taken from the Defendant.
3. The Government does not have any statements by the Defendant.
4. Counsel may inspect the tape recordings relating to this case.
5. Same.

GOVERNMENT'S ANSWER TO DEFENDANT'S MOTIONS.

6. Counsel may inspect and copy the transcripts of tapes and the electronic surveillance log; however, the Government declines to permit inspection of the internal memoranda specified in the Defendant's request.
7. The Government declines to permit inspection of the monitoring device.
8. Same as Number 6, above.
9. The Government has made available a copy of the Order of Authorization and attached papers. The Government will not disclose internal memoranda.
10. Same.
11. Same.
12. Same as Number 6, above.
13. Counsel may inspect the report of the F.B.I. laboratory expert. There are no other reports of scientific tests.
14. Counsel may inspect any and all photographs relating to this case.
15. Same.
16. The Defendant did not testify before the Grand Jury.
17. This is a single defendant case.
18. The only evidence the least ^{bit} favorable to the Defendant is contained in the Grand Jury testimony of Tony Castellani. Counsel will be supplied with a copy of it prior to trial.
19. The only electronic surveillance in this case is that

GOVERNMENT'S ANSWER TO DEFENDANT'S MOTIONS.

conducted by the F.B.I. pursuant to the order of the Honorable John O. Henderson dated February 16, 1972.

20. The Government has no information from other police agencies except the identification of the Defendant's voice by two Buffalo City Gambling Squad Detectives.

21. The Government has already made available copies of the Wiretap Order dated February 16, 1972 and Search Warrants dated March 6, 1972. There are no other relevant papers.

22. The only expert is from the F.B.I. laboratory. Counsel may inspect his report which gives his name and address.

23. The Government declines to provide a list of its witnesses prior to trial.

24. The Government will disclose criminal records of its witnesses at trial.

25. The Government does not understand this request.

B. BRADY MATERIAL

The Government knows of no Brady Material in this case other than the Grand Jury testimony of Tony Castellani which is essentially neutral and incidentally perjurious. As for the numbered requests, the Brady Rule is not a vehicle for general discovery of the theory and specifics of the Government's case. The Government notes, however, that with the Wiretap Order, the Search Warrant and Affidavit, the tapes and transcripts and the Grand Jury testimony of co-conspirators, the Defense will have 98% of the Government's case. The Government is aware that its duty under Brady is a continuing one.

GOVERNMENT'S ANSWER TO DEFENDANT'S MOTIONS.

G. BILL OF PARTICULARS

"The purpose of a bill of particulars is to inform the defendant of the nature of the charges brought against him to adequately prepare his defense, to avoid surprise during trial and to protect him against a second prosecution for an inadequately described offense.'" United States v. Addonizio, 451 F.2d 49, 63-64 (3 Cir. 1972), cert. den. ___ U.S. ___ (2/22/72). A defendant is not entitled to a bill of particulars in order to discover the identity of government informants or the theory of the Government's case. United States v. Dioguardi et al., 332 F.Supp. 7 (S.D.N.Y. 7/13/71). In a conspiracy case, a defendant is not entitled to a bill of particulars specifying the dates, times, and places of the making of the alleged conspiracy nor a description of overt acts not included in the indictment but which may be proven at trial. United States v. Iannelli et al., 53 F.R.D. 482 (S.D.N.Y. 8/24/71); and United States v. Lebron, 222 F.2d 531, 535-536 (2 Cir.), cert. den. 350 U.S. 876 (1955). With these rules in mind the Government makes the following response to the Defendant's specific requests:

1. The Government is unaware, at this time, that the agreement occurred outside the Western District of New York as charged in the indictment.
2. The principal co-conspirators are named in the indictment.
3. The Defendant Todaro is believed to have joined the existing conspiracy sometime during 1970.
4. Same as Number 2, above.
5. Same as Number 2, above. The Government declines to state the names and addresses of all other possible co-conspirators since it is not a matter properly within the scope of a bill of particulars.

GOVERNMENT'S ANSWER TO DEFENDANT'S MOTIONS.

6. Same.

7. The documentary proof linking the defendants to the conspiracy was all acquired on or after September of 1971. Counsel is free to inspect it in its entirety at any reasonable and mutually agreeable time.

8. The Defendant is believed to have participated in the conspiracy during the period specified in the indictment. The entry of the Defendant into the conspiracy and the details of the formation of the conspiracy are matters of proof and are not subject to discovery by way of a bill of particulars.

9. Same.

10. Same.

11. Same.

12. Same.

13. The Government declines to provide this information.

14. The Government does not believe that any of the overt acts alleged were committed at the insistence or instigation of the Government or its agents.

15. The Government is not aware of the date upon which the last act was performed.

16. The Government declines to provide this information because it is not discoverable by way of a Bill of Particulars.

17. Same.

18. Same.

19. Same.

20. Same as Number 2, above.

21. These are matters of proof for trial.

22. Same.

23. Same.

24. The Government declines to provide this information.

GOVERNMENT'S ANSWER TO DEFENDANT'S MOTIONS

25. Same.
26. Same.
27. Same.

Count II

1. This is a matter of proof for trial.
2. Same.
3. This is specified in the indictment.
4. Section 225.05 of the Penal Law of the State of New York.
5. Same as Number 1, above.

Count III

1. The offense occurred at approximately 10:00 a.m. on March 6, 1972 on the second floor of 52 Bannard Avenue, Town of Tonawanda, New York.
2. Same.
3. Search Warrants Nos. 92 and 93, Magistrate Docket 1972.
4. By setting it afire.
5. This is a matter of proof.

Entire Indictment

1. This is a matter of proof at trial.
2. The Government did not induce any co-conspirator to act as an agent provocateur nor was there entrapment in this case.
3. Same.
4. The vote of the Grand Jury is a matter of public record.
5. Same.

GOVERNMENT'S ANSWER TO DEFENDANT'S MOTIONS.

6. This material is not within the scope of a Bill of Particulars.
7. Same.
8. Same.
9. Same.
10. Same.
11. Same.
12. Same.

In addition, with respect to these above ten requests, it appears that the Defendant seeks inspection of the grand jury minutes apparently in order to challenge the indictment on grounds that it is based on insufficient and hearsay evidence. It is well settled that an indictment may be based upon hearsay evidence. Costello v. United States, 350 U.S. 359 (1956); and Callahan v. United States, ___F.2d___, 9 CrL 2025 (2 Cir.). In this case, however, the principal evidence was direct testimony of co-conspirators and witnesses to the unlawful activities of the Defendant. More importantly, however, for purposes of this challenge is a settled rule of law that "an indictment returned by a legally constituted unbiased grand jury, if valid upon its face, is sufficient to call for trial of the charge on the merits and satisfies the requirements of the Fifth Amendment." Lynn v. United States, 355 U.S. 339, 349 (1958); United States v. Eskow (279 F.Supp. 556 (S.D.N.Y. 1968); United States v. Wilkerson et al., 456 F.2d 57 (6 Cir. 3/15/72). What the Defendant, in fact, seeks is discovery of the Government's entire case prior to trial. This the law does not permit. 18 U.S.C. Section 3500; and United States v. Hon. Thomas R. McMillian, ___F.2d___, (7 Cir. 10/17/72).

D. STATEMENTS OF DEFENDANT

The Government has no statement from the Defendant. The

GOVERNMENT'S ANSWER TO DEFENDANT'S MOTIONS.

Government does, of course, have the Defendant's conversations intercepted over the wiretap as disclosed.

E. GOVERNMENT INFORMER

1. The Government received no physical evidence from the informers in this case.

2. The Government did receive information about the conspiracy as set forth in the several affidavits.

3.-8. The Government declines to reveal the identity of its informants. Thornton v. United States, ___F.2d___ (D.C. Cir. 10/21/71); Brenneman v. United States, ___F.2d___ (3 Cir. 2/11/72), cert. den. ___U.S.___ (6/26/72); and United States v. Sklaroff et al., 323 F.Supp. 296, 311 (S.D. Fla. 1971). The way in which the informants obtained this information is set forth in the affidavits.

F. EVIDENCE OBTAINED THROUGH SEARCH AND SEIZURE AND WIRETAPPING

Copies of the documents in question have been made available to Counsel. The Government does not contest the Defendant's standing to challenge the wiretap.

G. CONSTITUTIONALITY OF SECTION 1955

The defense makes the usual arguments against the constitutionality of Section 1955. These have been disposed of by this Court in United States v. Fino et al. (CR. 1972-143) and by other courts in Palmer v. United States, ___F.2d___ (6 Cir. 3/31/72), cert. den. ___U.S.___ (10/10/72); Harris v. United States, ___F.2d___, 11 CrL 2246 (5 Cir. 5/22/72) cert. den. ___U.S.___ (10/10/72); Schneider v. United States, ___F.2d___ (8 Cir. 4/12/72), cert. den. ___U.S.___ (10/10/72); United States v. Reihl, ___F.2d___, 11 CrL 2203 (3 Cir.

GOVERNMENT'S ANSWER TO DEFENDANT'S MOTIONS.

5/9/72); United States v. Becker et al., ___ F.2d ___ (2 Cir. 5/30/72); Angelini v. United States, ___ F.2d ___ (7 Cir. 9/15/71), cert. den. ___ U.S. ___ (2/28/72); United States v. Iannelli, 10 CrL 2436 (W.D. Pa. 2/16/72); United States v. Sacco (N.D. Calif. 1/14/72); and United States v. Walk et al., (D. Minn. 11/2/71).

In addition, however, Counsel, in his affidavit, deposes that "the gambling activities described in this indictment" are purely intrastate. It may be noted that three of the named co-conspirators have pleaded guilty to violating Section 1084 of Title 18 of the United States Code (Interstate Transmission of Bets).

Counsel also complains that the statute is defective because it fails to require scienter. It may be noted that scienter is not an element of Section 1114 of Title 18, which makes it unlawful to "kill" a judge of the United States. The same is true of a host of federal statutes proscribing among other felonies Conspiracy (Section 371), Assault (Section 111), and Treason (Section 2381).

H. INSPECTION OF GRAND JURY MINUTES

The Defendant seeks inspection of the grand jury minutes apparently in order to challenge the indictment on grounds that it is based on insufficient and hearsay evidence. It is well settled that an indictment may be based upon hearsay evidence. Coatello v. United States, 350 U.S. 359 (1956); and Callahan v. United States, ___ F.2d ___, 9 CrL 2025 (2 Cir.). In this case, however, the great bulk of the evidence was direct testimony of co-conspirators and witnesses to the unlawful activities of the Defendant. More importantly, however, for purposes of this challenge is the settled rule of law that "an indictment returned by a legally constituted unbiased grand jury, if valid upon its face, is sufficient to call for

GOVERNMENT'S ANSWER TO DEFENDANT'S MOTIONS.

trial of the charge on the merits and satisfied the requirements of the Fifth Amendment." Lynn v. United States, 355 U.S. 339, 349 (1958); United States v. Fakow (279 F.Supp. 556 (S.D.N.Y. 1968)); United States v. Wilkerson et al., 456 F.2d 57 (6 Cir. 3/15/72). What the Defendant, in fact, seeks is discovery of the Government's entire case prior to trial. This the law does not permit. 18 U.S.C. Section 3500; and United States v. Hon. Thomas R. McMillian, ___ F.2d ___, (7 Cir. 10/17/72).

I. MISJOINDER OF OFFENSES

Counsel argues that those who conduct an Illegal Gambling Business cannot also be charged with Conspiracy since the former is by nature a conspiratorial crime. In candor to the Court, although counsel does not cite the case, this theory has recently been adopted by one Federal District Court. United States v. Figueroa, 12 CrL 2253 (M.D. Fla. 11/20/72). In this Circuit, however, it is settled that "the commission of the substantive offense (i.e., Section 1955) and a conspiracy to commit it are separate and distinct offenses." United States v. Becker, ___ F.2d ___, (2 Cir. 5/30/72).

In paragraphs (5) through (9), Counsel requests that Count III be severed. Counsel has apparently misread the indictment. There is only one defendant charged in each of the three counts. In any event, it is clear that dissimilar charges may be joined in a single indictment if they arise out of the same series of transactions. United States v. Isaacs et al., 247 F.Supp. 743 (N.D. Ill. 5/30/72). The Government represents that Count III is part of the series of transactions specified in Counts I and II.

J. DISMISSAL OF THE INDICTMENT

The indictment in this case tracks the language of the

GOVERNMENT'S ANSWER TO DEFENDANT'S MOTIONS.

statute. Nothing more is required. United States v. Duren, 411 F.2d 275 (1969).

K. OTHER MOTIONS

The Government does not seek to restrict the Defendant in making proper motions seasonably.

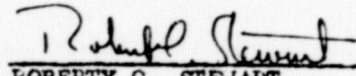
RESPECTFULLY SUBMITTED,

JOHN T. ELVIN
UNITED STATES ATTORNEY
WESTERN DISTRICT OF NEW YORK

DATED: March nd 2, 1973

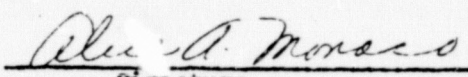
AT: Buffalo, New York

By:


ROBERT C. STEWART
DEPARTMENT OF JUSTICE ATTORNEY

CERTIFICATION

I hereby certify that a copy has been mailed to Herald P. Fahringer, Jr., Esq., One Niagara Square, Buffalo, New York, on March 2nd, 1973.


Signature

SENTENCING MEMORANDUM

IN THE MATTER OF THE SENTENCING
of
RICHARD J. TODARO

Before the
HONORABLE JOHN T. CURTIN
United States District Court Judge for
the Western District of New York

Respectfully submitted,

HERALD PRICE FAHRINGER, ESQ.
One Niagara Square
Buffalo, New York 14202
(716) 849-1333

Attorney for RICHARD J. TODARO

LIPSITZ, GREEN, FAHRINGER,
ROLL, SCHULLER & JAMES
of Counsel.

SENTENCING MEMORANDUM.

PRELIMINARY STATEMENT

On April 29, 1976, Richard Todaro was found guilty of a violation of Title 18, §1955, and a violation of Title 18, §2232, by a jury before the Honorable John T. Curtin in the United States District Court for the Western District of New York.

Sentencing was ultimately set for July 22, 1976. Prior to that date counsel was permitted to examine the pre-sentence report submitted by the United States Office of Probation and Parole, including certain materials submitted by the Strike Force in connection with sentencing.

This sentencing presentation contains materials relevant to the subject of sentencing of Richard Joseph Todaro, including an evaluation of the recommendations made by the Strike Force regarding the proper punishment to be meted out under the circumstances. The various categories of information are conveniently divided under appropriate subheadings.

SENTENCING MEMORANDUM.

BACKGROUND OF RICHARD JOSEPH TODARO

Richard Joseph Todaro was born on February 1, 1936, and comes from a family of seven children. He was educated in the Buffalo Public Schools, and specifically graduated from Hutchinson Central High School in September of 1943.

Generally, his family was relatively poor, his father and mother both being immigrants who arrived in this country at the beginning of the Twentieth Century and found employment opportunities to be relatively meager.

The defendant has been married to the former Rosalie Pantapinto since November 9, 1957, and, as revealed in the Probation Department's report, this has been a very successful marriage. As a result of this marriage, Richard and Rosalie Todaro have produced four children; Linda, born November 25, 1958 who is currently completing her senior year at Kenmore West, and is by all accounts an excellent student; Richard, born May 1, 1960 who is a sophomore at Kenmore West, and who is also an excellent student; David,

SENTENCING MEMORANDUM.

born November 15, 1962 who is in the ninth grade at Herbert Hoover; and Joel, born June 5, 1964 who is in the sixth grade at Philip Sheridan School. They have, as is attested to by the Probation Department's report, a very pleasant life and their home is located in a very pleasant neighborhood.

Counsel has included several letters from school officials indicating the excellent character and intelligence of these children, and also expressing the professional opinion that such excellence is due to the very fine family situation which Richard and Rosalie Todaro have provided for their children. Their fine qualities are at least in part due to the obvious interest Richard Todaro has displayed in the educational and recreational aspects of his children's lives.

The letters which we have attached also indicate that Mr. Todaro makes a worthy contribution to the community, and participates in several community affairs including the task of coaching a little league baseball team. He is also highly involved in attending school functions and activities and is in all respects a concerned parent.

SENTENCING MEMORANDUM.

In short, all indications from those individuals who know Mr. Todaro and his family life, and from the information gathered by the Probation Department, clearly demonstrates that Mr. Todaro is chiefly responsible for developing and maintaining a very excellent marriage and family unit.

THE OFFENSE

Richard Todaro was convicted of the felony of engaging in gambling activity in violation of §1955 of Title 18 of the United States Code, and of the misdemeanor of destruction of property contrary to §2232 of Title 18 of the United States Code. The charge of conspiracy in violation of Title 18, §371 of the United States Code was dismissed by this Court at the end of the Government's case, pursuant to Rule 29 of the Federal Rules of Criminal Procedure.

The proof at trial demonstrated that the defendant's role in the alleged offense was an extremely minor one of very short duration.

SENTENCING MEMORANDUM.

Todaro simply supplied information to Tony Castilani regarding the odds or so-called "line" on various sporting events on a few intermittent days in February of 1972. No matter how much the Government would desire it to be otherwise, the information was not supplied every day during that period, and occurred during a time when Anthony Castilani's father, self proclaimed as the best odds maker in the County of Erie, was in Florida, and ill. Moreover, contrary to the impression the government would like to create, the proof clearly demonstrates that Todaro's information was not relied upon exclusively by Castilani. On the contrary the Government's own evidence demonstrates that Castilani had either changed the figures that Todaro had given him, or did not use them at all. Similarly, the proof conclusively demonstrates that even when Todaro did not call Castilani, a "line" was obtained from other sources, and accordingly bets were accepted.

It is extremely significant that in passing sentence the Court recognized the relatively minor role

SENTENCING MEMORANDUM.

Todaro had in this enterprise during the brief period of time that he was calling Castilani. This is evidenced by several uncontested facts:

- (1) Todaro never gave any orders or directions to anyone;
- (2) never discussed bets, betting action, winnings, losses, etc.;
- (3) never laid off bets, placed bets or discussed bets with anyone;
- (4) never shared in the profits or losses and at most, according to the Government, received a meager \$40 or \$50 payment.

Finally, it is significant that the information Todaro supplied is readily available from a variety of sources, e.g., newspapers, phone service, magazines, so-called tip sheets, etc.

There can be no question that the leaders, organizers, operators, directors, financiers, etc. of this gambling activity were Tony and Steve Castilani, and certainly not Richard Todaro.

SENTENCING MEMORANDUM.

STRIKE FORCE VERSION AND
RECOMMENDATION

Although, as is customary before this Court, the Probation Department has made no recommendation regarding sentencing, nor has it attempted to evaluate the defendant, the Government has supplied its version and recommendations. This material is set forth in the Probation Department's report beginning on page 3.

The Government's recommendation is somewhat puzzling in that it suggests that the Court impose the maximum sentence in a case where no similar recommendation was made with regard to the admitted chieftains Messrs. Castilani, Giglia, et al. This recommendation is apparently based upon the Government's analysis of Todaro's "arrest" record, and obviously upon the fact that Todaro exercised his constitutional right to a trial by jury.

If the Government's recommendation is, as it appears to be, based upon Todaro's "record" then the Government must no longer believe in one of our Constitu-

SENTENCING MEMORANDUM.

tion's most basic principles, that a man is innocent until proven guilty, for the defendant has only one conviction for possessing a weapon in 1967. For this, his sentence was suspended and he was fined \$1,000. Only by relying upon surmise, conjecture, suspicion and innuendo, can one reach the conclusion expressed by the Government regarding Todaro's "record".

We as judges and lawyers would not be less than hypocritical if we were to punish this man in any way on the basis of "arrest", "acquittal", "complaint", "dismissal", or any of the other situations represented in the Probation Department's report, and at the same time instruct our juries that they cannot attach any weight to such matters at all. Surely this Court in the absence of knowing all the facts surrounding the situations which allegedly constitute the defendant's "record", will not be influenced, nor give any weight to these mere allegations at all.

Interestingly enough prior to trial the Government offered to allow the defendant to plead guilty to the misdemeanor count of the indictment in full satisfaction of the

SENTENCING MEMORANDUM.

other counts, with the understanding that it would make no recommendation at all to the Court regarding sentence. Certainly the fact that the defendant exercised his right to a trial should not now be used to penalize him. This is especially true in light of the fact that as a result of the trial the Government has now learned how insignificant the defendant's alleged involvement really was.

In short, there is absolutely no sound basis upon which the Government's recommendation regarding sentencing can be based, except that it was made to participate in a trial, to which the defendant is guaranteed by our Constitution. Surely the fact that a man exercised his basic right to a trial is no valid or weighty basis upon which to conclude that he should be punished as severely as permitted by the law.

SENTENCING MEMORANDUM.

JUST PUNISHMENT

Counsel's past experience with this Court leaves no doubt but that it is thoroughly familiar with all the proper ingredients which go into meting out of a just and proper sentence. It is unnecessary therefore to tax the Court with a repetition of the virtues of probation, and its relatively low cost to the citizens of the United States, etc., viz-a-viz the vices of incarceration. Nonetheless counsel does feel that it is absolutely necessary to emphasize the unjust and unfair situation which would arise if this man were incarcerated or his liberty otherwise restrained.

All sides agree that this man's marriage and family are the best, almost to the degree of being idealistic. Numerous letters which have been attached hereto attest to this fact from the vantage point of neutral observers. Incarceration would only destroy or severely strain this spousal and parental relationship, which, by its very existence serves as a worthwhile contribution to society. Mr.

SENTENCING MEMORANDUM.

Todaro still has young children who need and are presently receiving daily contact and guidance from their parents which is most essential at their present ages. Additionally, the stigma of conviction is one thing for the family unit to bear; however, the added stigma of incarceration may indeed be unbearable.

The impact upon the defendant and his family is an important factor in arriving at a proper sentence. However, another factor of paramount importance is that of comparative punishment.

By their own admission the entire operation was conceived, assembled, financed, owned, managed, and operated by the Castilanis with some interplay by Giglia. The Government could not for one moment attempt to place the defendant on the same plane as these individuals. On September 8, 1972, they all pleaded guilty to the felony offense set forth in Title 18, §1084. Each defendant received varying sentences of probation or paid relatively modest fines.

SENTENCING MEMORANDUM.

Certainly it would be manifestly unjust to punish this defendant more severely than the admitted leaders and organizers of the gambling enterprise just because he exercised his constitutional right to a trial.

Disparate sentences cannot be justified on the basis that Todaro has some sort of a prior "arrest" record. This is especially so since Steve Castilani has a record of gambling arrests and convictions which stretches back for a period of approximately twenty years.

NATURE OF THE OFFENSE

The present offense is described by the probation department as being only moderately severe. In fact, when this offense is viewed in light of the state of gambling as it exists in our state at the present time, any gambling offense must be classified as minimally severe at best.

Although still outlawed for private individuals, gambling as a state institution flourishes. OTB, the Lottery,

SENTENCING MEMORANDUM.

Bingo, are permanent fixtures in our society's makeup, and recently a proposal was made in the New York State Legislature that New York's laws be changed so as to accommodate Las Vegas style gambling by the year 1977. Although the existence of these forms of "legal" gambling do not per force justify transgressions of our state and federal laws, they cannot be ignored when determining what penalty shall be imposed for one who has been adjudged as a transgressor.

Prisons and formal programs for supervision should be reserved for the violent, anti-social, emotionally unstable offender, or one who either poses a threat to the community or needs some structured form of rehabilitation. Richard Todaro does not fall into any of these categories. His alleged offense involved no violence, and indeed no victim. The letters which have been attached hereto clearly demonstrate that he is and has been functioning in a productive way in the community, and that his sentence should be such that his closeness and interrelationship with his family and the community is not disrupted.

SENTENCING MEMORANDUM.

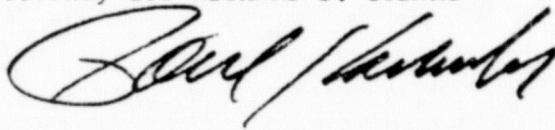
It is respectfully requested therefore that the Court punish this man in a way which relates to the type of offense involved, his relatively minor role in such offense, and the punishment imposed upon those individuals who actually ran the enterprise. In short, it is respectfully requested that this Court impose a fine only.

Respectfully submitted,

HERALD PRICE FAHRINGER, ESQ.
One Niagara Square
Buffalo, New York 14202
(716) 849-1333

Attorney for RICHARD J. TODARO

LIPSITZ, GREEN, FAHRINGER,
ROLL, SCHULLER & JAMES
of Counsel.



83a

SENTENCING MEMORANDUM.

St. Andrew's Church

1525 SHERIDAN DRIVE
BUFFALO, NEW YORK 14217

June 15, 1976

Mr. Todaro has been a member of our Parish for some years. He has a very fine wife and children. In our dealings in the Parish I have found him to be cooperative and I feel strongly that his wife and children are in need of his guidance and help at this time.

I trust that every consideration will be given to Mr. Todaro, particularly from the viewpoint of a husband and father.

J. E. Schieder

Msgr. Joseph E. Schieder, P.A.
Pastor

JES:g

SENTENCING MEMORANDUM.

St. Andrew's Church

1525 SHERIDAN DRIVE
BUFFALO NEW YORK 14217

May 29, 1976

To Whom it may concern.

Richard Todaro is a registered
parishioner at St. Andrews. I attest to his
character as being a good husband
and father. He has seen to the religious
education of his children.

Sincerely yours,

Rev. Daniel J. Palys

Asst. Pastor

St. Andrew's R.C. Church

SENTENCING MEMORANDUM.

June 16-76

Honorable Judge Curtin

I have been a neighbor
of Mr Richard Todaro and
Family, for the past ten years.
They are wonderful neighbors
and helpful.

I feel that Richard is a decent
honest person. in every way.

I can see that he is a
good Father to his family
and I feel that he loves
his family and his home.

I feel that it is as the
Sincere Truth is

Mrs. E. D. Field
60 Barnard. Ten. N.Y.

SENTENCING MEMORANDUM.

1231 Payne Avenue
No. Tonawanda, N.Y.
June 18th, 1976

Honorable Judge Carlton,

Having been a teacher in the Kenmore School System for the past eight years, I have had two of the Todaro children in my classroom and therefore have had many contacts with the Todaro Family.

It is from these contacts that I can quite truthfully say that Mr. Richard Todaro exhibits all the genuine, sincere, and loving qualities a father should show to his children. He has shown much interest in his children's academic grades as well as their social well-being. This is evident in the various school functions Mr. Todaro and his wife have attended during the past four years.

I have also witnessed the family's closeness that exists outside of school, at various sporting events.

SENTENCING MEMORANDUM.

It is my belief that Mr. Todaro offers his family an environment in which mutual trust, friendship, and love abound.

Most sincerely,
Bonnie J. Clark

SENTENCING MEMORANDUM.

Honorable Judge Carter June 8, 76

I am writing this on behalf
of Richard Tetlow, who has been
in my court does night for the
last 16 years. He and his entire
family have been very good
to me. I am a widow and very
poor and have the offer that I
can call on the Tetlow family
anytime day or night. Richard
is a good person and a good family
man and I could not ask for
a better neighbor if I wanted to
there is not one bad thing I

BEST COPY AVAILABLE

SENTENCING MEMORANDUM.

could say about Richard. He has
always been kind and helpful
to me in every way

Sincerely yours
Mrs A. Ida Pammers
48 Barnard Ave.
Ton, N. Y.

SENTENCING MEMO: DUM.

June 9, 1976

Judge Curtin,

Richard Todaro was enrolled in my art class at school for two consecutive years. I have come to know his parents, Mr. and Mrs. Todaro, through their regular attendance at open house and other school functions, several times yearly.

Mr. Todaro has continually expressed his concern and interest in Richard's progress and work habits. Due to the fact that Richard is very talented and interested in art Mr. Todaro and I have discussed the possibilities of a future art career for Richard. He has also inquired about information for private lessons and summer school art programs.

In view of this, it is my opinion that Mr. Todaro has shown unusual interest in Richard's progress in school, and is one of the most concerned parents I have met.

Yours Truly,
Deborah A. Lloyd.

SENTENCING MEMORANDUM.

KENMORE - TOWN OF TONAWANDA PUBLIC SCHOOLS

KENMORE WEST SENIOR HIGH SCHOOL

35 HIGHLAND PARKWAY
KENMORE, NEW YORK 14223

June 20, 1976

To whom it may concern.

I have known Linda Todaro for three years and her youngest brother Joel for one year. They have both been in stage productions for me, and Linda has, for three years, been a member of the Kenmore West performing group the Devil's Choice of which I am the adviser; she has also been and is currently a student in one of my classes. I know these two young people rather well and therefore feel more than qualified to express myself regarding the type of young people they are and the probable home conditions from which they come.

Linda is in the top 5% of an almost 900 student graduating class at Kenmore West. Though she is one of the most talented, intellectual students in the school and certainly one of the most admired, she remains totally unassuming about her qualities and her achievements. She is one of the most pleasant, hard-working students I have ever known. She is totally dedicated, sincere and dependable. She constantly displays

SENTENCING MEMORANDUM.

a marvellous degree of great maturity. She is most respectful to her teachers and her peers, always displaying sincerity and concern for those around her. Though it is seldom true in most cases, it is certainly a fact in this one that there are too few superlatives to adequately describe the gentle loveliness and intellectual awareness of this marvellous yet modest young lady.

Though I have known Joel for less than a year, he undeniably fits into the same pattern as his sister Linda. He is an absolute delightful child who is at once extremely talented and remarkably unassuming.

There is no doubt in my mind that the fruit has not fallen far from the tree and has been enriched with the quality of the parent. It is inconceivable that children such as these could stem from anything but a home which is manifestly filled with characteristics of love, respect, care and humanness. These young people clearly reflect in upholding what is devoutly to be wished for all of our children. One finds it most difficult to imagine the parents being less estimable than the progeny.

Very sincerely
 Daniel J. Shaw

SENTENCING MEMORANDUM.

June 20, 1976

To whom it may concern:

I have known Richard Todaro for a number of years. I have found him to be kind, considerate and a devoted husband & father.

However, I've become to know this gentleman a lot better since he has taken the almost thankless job of managing a Grasshopper Little League baseball team. My son Anthony is a member of the team and I attend regularly to the games.

Richard and his wonderful family take an active part in this project and contribute their time and energy vigorously.

In closing let me say Richard Todaro is a man I am proud to know and hope our friendship continues.

Respectfully yours,
Daniel F. Del Priore

SENTENCING MEMORANDUM.

June 13, 1976

Judge John T. Curtin,

I just would like to say that Dick Todaro has been a wonderful friend and neighbor. In the past 10 years we have learned to know Dick and his family very well.

He has always been friendly and considerate of others. Very often you will find him working in his yard or playing ball with his kids. I couldn't think of a better husband and father than Dick is.

Sincerely yours,
Mrs. Sonya Reuther

SENTENCING MEMORANDUM.

June 8, 1976

Honorable Judge Curlew,

I cannot write this letter myself as I am handicapped and have been since 1957 but I mean every single word of it and will sign it the best way I can at the end.

Richard Indaro and his lovely family have been my next door neighbors since 1966 and it has been a pleasure.

I feel very strongly that betting on anything is a personal thing and have done it myself before I became handicapped. If I wanted to bet I did and hurt nobody whether I won or lost.

It is sad that we have such laws passed in our country that put someone through so much hardship for such a thing.

SENTENCING MEMORANDUM

2) Richie is a good person, always respectful always a gentleman in every way. He is always helpful. Nobody knows better what it means to have someone to depend on and I feel I can call on him anytime. This is true of his whole family. They are courteous and kind and never noisy and rowdy like some neighbors.

Richie takes good care of his family and home yard and surroundings. I feel that he is an exceptional father and spends so much time with his children. It is so nice for me to watch him play ball and do different things with the children. They work and play together. It gives me pleasure to watch the whole family doing things together.

SENTENCING MEMORANDUM.

31 I hope to have Richie, his
wife and children as my neighbors
for a long, long time.

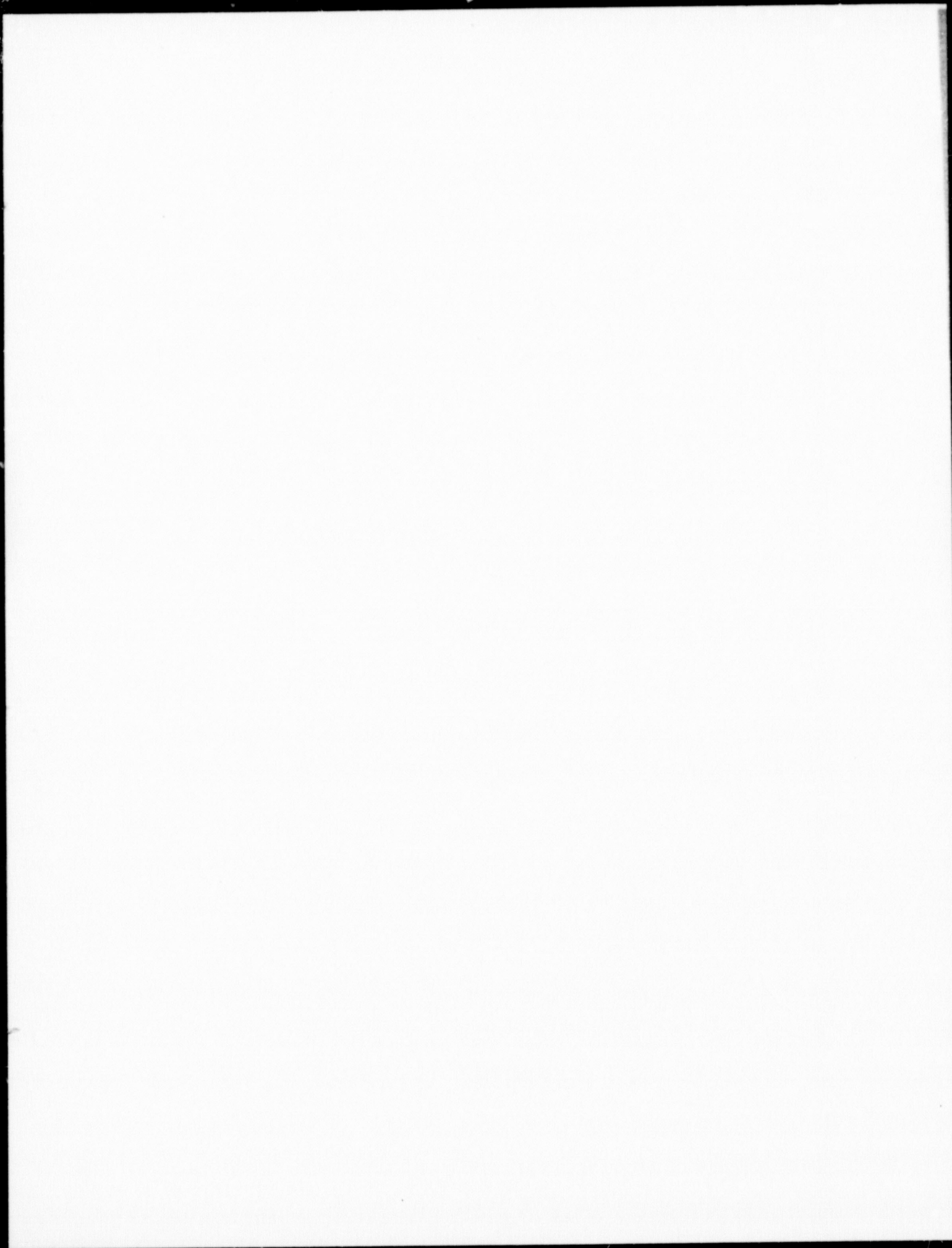
Respectfully and

Sincerely,

Johanna Maurer

48 Sarnard Ave.

Donawanda, N. Y.
14150



CASE AND EXCEPTIONS.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES

-v-

CRIMINAL DOCKET
NO. 1973-96

RICHARD JOSEPH TODARO,

Defendant.

Proceedings of trial held before the HON.
JOHN T. ... JIN, United States District Judge and a Jury, in
Part I, United States Court House, Buffalo, New York,
commencing on April 20, 1976.

APPEARANCES:

RICHARD J. ARCARA, United States Attorney,
by RICHARD D. ENDLER, Esq., and DENNIS
O'KEEFE, Esq., Attorneys, United States
Department of Justice.

LIPSITZ, GREEN, FAHRINGER, ROLL, SCHULLER
& JAMES, Attorneys for the Defendant;
HERALD P. FAHRINGER, Esq., and PAUL J.
CAMBRIA, JR., Esq., of Counsel.

Discussion.

PROCEEDINGS: April 20, 1976, 2:00 p.m.

APPEARANCES: As before noted.

(Defendant present.)

THE COURT:

Mr. White informs me that Judge Elfvin will be finished selecting in a few minutes and at that time will supply our pool here with jurors not used. As I understand it, both sides are ready to pick a jury. Mr. White, would you put a jury in the box, please.

(A jury of 12 was duly examined, impanelled and sworn.)

THE COURT:

We will swear two alternate jurors.

(Two alternate jurors duly examined, impanelled and sworn.)

THE COURT:

Ladies and gentlemen, we will begin the trial of this case tomorrow morning at 9:30. Go to the jury room a few minutes before 9:30 and I hope we will be able to get started promptly at that time. In the

Discussion.

meantime, do not discuss the case with anyone, the fact that you are a juror, your friends, your relative, anyone else. You should make up your mind early upon what you hear in the courtroom.

Spectators and other jurors, please keep your places and you may go out with the Marshal and go to the jury room on the 5th floor where you will convene in the morning a few minutes before 9:30.

(Jury escorted from the courtroom.)

THE COURT:

You other ladies and gentlemen, thank you for being here and being ready to serve. You will be excused now. Please call next Monday after 5:00 o'clock for additional further instructions. Thank you. We will now be in recess.

(Prospective jury panel escorted from the courtroom.)

MR. FAHRINGER:

Judge, I have a few things I would like to take up with the Court. Maybe we

Renewal of Motions.

can do it tomorrow morning but I would like to do it before, whatever is your pleasure.

THE COURT: Mr. Endler.

MR. ENDLER: Yes, your Honor.

THE COURT: Mr. Fahringer has several things that he wants to talk about and maybe we cannot solve them now but at least we will know what the problems are.

MR. ENDLER: All right.

MR. FAHRINGER: Is it please your Honor, there is some authority now, - I don't understand it, that suggests that certain motions be renewed before trial and I would like to do that I will be very brief. I would like, your Honor, to renew the motion to suppress in this case, which you have already heard and resolved.

THE COURT: I know of no authority to go all through this again.

MR. FAHRINGER: I am not going to argue it, your Honor. There is authority which indicates I should renew the motion for severance, the third Count, your Honor, before trial. That is where we asked that the Count of

Discussion.

destruction of evidence not be tried at the same time as the other two Counts and I do that now.

Your Honor, I am concerned about the designation in the indictment of unindicted co-conspirators. The case, your Honor, of the United States vs. Briggs 514 F.2 794, just decided by the 5th Circuit, I think in very strong language, your Honor, suggests that the grand jury has no authority to label people unindicted co-conspirators. It is my contention, your Honor, that if the indictment is read to the jury in the opening by Mr. Endler and these other persons are described as unindicted or indicted co-conspirators, people who are not here, this would be prejudicial and I would ask - -

THE COURT:

I will look at the case, Mr. Fahringer, but certainly the jury will be told again and again that they are to decide the guilt or innocence of Mr. Todaro as to the evidence against him. I mean labels are certainly no evidence. The indictment

Discussion.

is certainly no evidence here.

MR. FAHRINGER: I appreciate that.

THE COURT: I told them that once.

MR. FAHRINGER: I have no complaint with those instructions, your Honor. My concern is the formal document and the fact that the grand jury has found other persons - -

THE COURT: It means nothing, absolutely nothing at all - -

MR. FAHRINGER: Your Honor - -

THE COURT: You and I have been up and down this business again and again.

MR. FAHRINGER: Your Honor, I hope you will forgive me for making a record.

THE COURT: You should make a record but if you have made a motion once, Mr. Fahringer, I don't know about the necessity of making it again.

MR. FAHRINGER: This motion has never been made before, your Honor.

THE COURT: All right.

MR. FAHRINGER: Your Honor, I am concerned and I will take this up at the appropriate time but there is a case in the 2nd Circuit which indicates if you have any complaint about

Discussion.

the tapes that are going to be brought in, you ought to make that before the trial commences. Now, your Honor, these tapes, we have heard them. It is a voice, an FBI Agent or someone who says "Richard Todaro talking to so and so in such and such a call", and I object to that. I don't think that has any part of being the part of the tape that is heard by the jury. It is another person who apparently is editorializing, is indicating what is to come.

THE COURT:

Mr. Fahringer, please, on this score this especially is something that should have been taken up with Government counsel months ago. You take that up with Mr. Endler immediately. I think that I can agree that as far as labeling things that perhaps there has to be some way of identifying various tapes and keeping them separate, number 1, number 2, but that is something that can be taken up in a reasonable fashion with Mr. Endler and should have been done a long time ago.

MR. FAHRINGER:

I will do that, your Honor. Your

Discussion.

Honor, I don't think there ought to be any reference in opening statements about strike force lawyers or anything of that sort. I would like to make certain that there isn't any designation of - -

THE COURT:

I have not made any reference. As far as I am concerned, Mr. Endler and Mr. O'Keefe are Attorneys for the Government.

MR. FAHRINGER:

All right. Thank you, your Honor.

THE COURT:

I do not think that any witnesses or anybody else, Mr. Endler, should talk about strike force.

MR. FAHRINGER:

Your Honor, there is one other factor that might come up early in the trial and that is two Buffalo police officers, a Dave Darico and a Mr. Dragonette, both who were, I believe, on the gambling squad, whom the Government has advised us, they intend to call to identify Mr. Todaro's voice. I think this would be highly prejudicial and I am prepared now to say for the record that we will stipulate that if these witnesses were called they would identify Mr. Todaro's voice on these tapes. I also tell you right now, it is my present

Discussion.

contention - -

THE COURT:

Wait just a minute. That would be sufficient, wouldn't it, Mr. Endler, if the voice, - what more can be asked?

MR. ENDLER:

Well, the only thing Mr. Dragonette and Mr. Darico were prepared to testify to is, without the benefit of any transcript or anyone telling them whatsoever, a tape was given to them without any designation of what went on there and on each and every occasion they picked out the voice of Mr. Todaro. If the defense will stipulate that the ten conversations which the Government attributes to the defendant are in fact his, then Mr. Dragonette and Mr. Darico would be redundant.

MR. FAHRINGER:

Your Honor, my stipulation, I think you will understand, if these witnesses were called would testify to, but obviously we are putting no evidence in in contravention of that. I don't want to stipulate any material element of the offense.

THE COURT:

It is a matter of verbiage, but Mr. Endler carefully wants to be sure that there is no, no, no argument to be made

Discussion.

that there is any lacking that the Government could have gone and should have brought in additional evidence.

MR. FAHRINGER:

I don't intend to make that claim.

THE COURT:

I think that you are right, that the stipulation should be, "If Officer so and so were called and he listened to the tape, he would testify that the voice on the tape was the voice of Richard Todaro, the defendant".

MR. FAHRINGER:

Right.

THE COURT:

And he knows that to be true, whatever. We do not have to get into the experiences. You can work out the wording of it.

MR. FAHRINGER:

Your Honor, will you hear me on one other issue?

THE COURT:

I will hear you on any and all motions, Mr. Fahringer, certainly.

MR. FAHRINGER:

One thing that troubles me, and if you will bear with me, it seems to me that if the Government's objective is to establish Richard Todaro's voice, and I stipulate that the witnesses will say it is his voice, there is no need to identify these people as Buffalo police officers.

Discussion.

I am fearful of even saying that, your Honor, in the stipulation, I think you will understand my concern.

THE COURT:

I think the jury should have some statement that these are individuals who have known his voice for some time and that - -

MR. FAHRINGER:

Judge, I just don't want it to come through that they could because they arrested him or listening to other tapes.

THE COURT:

The Government, if they put the officers on the stand, they certainly would not, unless absolutely necessary, get into the fact that these men arrested Mr. Todaro at any time.

MR. FAHRINGER:

That's right.

THE COURT:

But on the other hand, the jury must be left with some anchor hold here. I mean if there is a name that they have no way of knowing, we have to have some statement, I think, that the witness, the proposed witness, has known Mr. Todaro over a period of years and they have listened to the tapes and they say, "Without any doubt, this is the voice of Mr. Todaro". Mr. Endler.

Discussion.

MR. ENDLER:

Yes, your Honor.

THE COURT:

Do you think you can work something out along this line?

MR. ENDLER:

Fine, your Honor.

THE COURT:

I do not want to take one whit away from your case.

MR. ENDLER:

The only problem I foresee, and I don't know whether Mr. Fahringer is aware of this, but the witnesses, both of them, Mr. Dragonette and Mr. Darico listened to the tape, as I said, without benefit of transcript and none until Thursday, I believe, of last week were they given a transcript and we had made a motion in January, your Honor, to introduce the transcript to the jury while the tape is being played and the detectives were also going to go through these conversations and authenticate the transcript so I would use them for that purpose too.

MR. FAHRINGER:

Your Honor - -

THE COURT:

Authenticate the transcript?

MR. ENDLER:

In other words, to show - -

THE COURT:

The authentication of transcript is not, unless it is a foreign language - -

Discussion.

MR. ENDLER: No, when I say "authenticate" - -

THE COURT: The jargon of it, is not the work of an expert. It would be the hearing of the jury.

MR. ENDLER: Yes.

THE COURT: In looking at the transcript. Before that, I suppose, examining and listening by counsel and perhaps court.

MR. ENDLER: Yes, your Honor.

MR. FAHRINGER: That's right, your Honor. You have my complaint marked. My only concern is that if the jury hears that these two Buffalo policemen - -

THE COURT: Mr. Fahringer, I say these are the kind of things you should take up out of court, long before trial, with Government counsel.

MR. FAHRINGER: I will, your Honor.

THE COURT: Do it ahead of time. You knew what was coming here.

MR. FAHRINGER: Your Honor, just a minute. We didn't know. We got the witness list just - -

THE COURT: You knew that this was going to happen. This is why we have all these meetings.

Discussion.

MR. FAHRINGER:

Your Honor, I didn't know that they were going to bring in Mr. Darico and Mr. Dragonette.

THE COURT:

You knew they were going to bring in somebody.

MR. FAHRINGER:

Yes, your Honor, if they put his mother on the stand, I wouldn't have any complaint about that.

THE COURT:

That can be solved. Next problem.

MR. FAHRINGER:

Your Honor, the only other thing I would like to mention is, and I think this comes very early and the only reason I address myself to it now, because I think they are going to put the search warrants in evidence and - -

THE COURT:

Wait a minute.

MR. FAHRINGER:

They have been marked as exhibits and given to me, Judge.

THE COURT:

Did you talk to Mr. Endler about this?

MR. FAHRINGER:

No, I haven't, your Honor.

THE COURT:

Mr. Endler, what is your intention?

MR. ENDLER:

Yes, your Honor. Now, I would like to state too quick things, your Honor. On January 21st of this year we gave defense counsel a copy of our witness list

Discussion.

on which Mr. Dragonette and Mr. Darico's names were mentioned. On Friday I talked with Mr. Cambria and I told him at that time that the search warrants had been marked for identification, that the Government was not intending to introduce them in evidence except for the search warrant of Mr. Todaro's residence which is the basis of the 3rd Count, the authority for the agents to be there, and we were only going to introduce the first page, not the entire - -

THE COURT:

Not the affidavit?

MR. ENDLER:

No, just the first page, the cover page, the search warrant, the blank form or the form.

THE COURT:

They certainly would not put in the affidavits.

MR. FAHRINGER:

I understand that, but your Honor, I understand that is a matter strictly for the court. I think that the inference to the jury is that if they see a search warrant - -

THE COURT:

They will have to show to the jury and it may be an element of the charge

Discussion.

that the officers had a right to be there. If this may be done in some easier fashion it will be done. Talk to Mr. Endler about it.

MR. FAHRINGER: All right, Judge. That is all I have.

THE COURT: Will you remind me in the morning. I will look at the Briggs Case, Mr. Fahringer and - -

MR. FAHRINGER: May I just add one thing?

THE COURT: The thing is in order to have a conspiracy, you have to have conspirators and if you do not indict somebody, then you put their names in the indictment. Otherwise I suppose someone says, "Well, we don't know". You see, if you just say "John Doe" that is not fair to the defendant because you are not spelling out the conspiracy in such a way that we can meet the charge so that you put names in and I suppose it does not add anything to it if you do not say they are defendants and then they are conspirators I don't know.

MR. FAHRINGER: Your Honor, on that point, here is

Discussion.

my argument in a nutshell. It seems to me that they have every right to put the names in but the jury has to determine whether these people are conspirators. This thing of labeling the conspirators, this is the only party in the whole litigation who's kind of designated as something. As a matter of fact, I just had an experience, your Honor, where the Judge read the indictment to the jury and every other time they mentioned one of these other persons it was co-conspirator this, co-conspirator that, and I think the prejudice is that they have to decide whether they are co-conspirators.

THE COURT:

Things are said in the indictment other than the fact that the man is a conspirator. Some indictments say that defendant A shot B and you have to say things like that in the indictment so the defendant can face up to the charge.

MR. FAHRINGER:

I appreciate that.

THE COURT:

Maybe you do not have to say "Unindicted", but I do not think it will make any difference but I will read the *Brigs Case*.

Discussion.

MR. FAHRINGER:

Thank you.

THE COURT:

If you have any other matters, Mr. Fahringer, why don't you talk to Mr. Endler and Mr. O'Keefe. A lot of these things can be worked out ahead of time. They do not want to have any error in this case either and I think it ought to be said here that Mr. Mertzloff, I think I really stretched the point a bit when I excused him, but I believe that justice is not only what happens in a court but the appearance of justice. I really think that Mr. Mertzloff would have been a fair juror but he had serviced the police cars, the troopers cars and he told us that candidly for a period of years. He knew Hartnett and he knew the family for a number of years and I believe him when he said that that would not make any difference to him, but nevertheless we excused him. I do not think that as a matter of law, you could insist that he be excused. If I had him stay that would have been the end of it. I think in these matters, you will find that we all want the case go

Discussion.

ahead and go ahead fairly but many of these things can be taken up and taken up simply if you will just ask Mr. Endler or Mr. O'Keefe about them in the beginning. If you cannot get satisfaction there then come to me.

MR. FAHRINGER:

All right, your Honor.

THE COURT:

You do not have to bring everything to me.

MR. FAHRINGER:

You are right, your Honor, and I want to tell your Honor I appreciate the judgment you exercised. I only, incidentally, your Honor, on some of these matters I hope you appreciated I do it because I think we ought to try to avoid problems coming up in the presence of the jury. Most of the things that I have raised here were by way of anticipation.

THE COURT:

Right.

MR. FAHRINGER:

But you are right, your Honor, perhaps if I had discussed one or two of these matters with Mr. Endler, they could have been resolved by ourselves and I hope they will. I will take these matters up right now and I hope we can work it out.

28

Recess.

THE COURT:

We will be in recess.

(Recess taken at 4:15 p.m.)

* * * * *

Proceedings, dated 4-21-76.

PROCEEDINGS: April 21, 1976, 9:35 a.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury not present.)

THE COURT: Is there anything before we have the jury come up?

MR. ENDLER: Just very briefly, your Honor. I would request that your Honor, would please, not knowing exactly when or the course of events, if your Honor would instruct the jury to be very careful as they walk out and not touch any of the buttons or the wires.

THE COURT: Do not get tangled in the wires. Mr. Fahringer, I have read the Briggs Case and without getting into detailed discussion, I think procedurally our Circuit just would not take it up because I do not think there is a case for controversy. I do think that some of the language, however, is wise in what the grand jury ought or ought not to do. In that case, of course, the claim was made by the unindicted co-conspirators. Here

Discussion.

it is made by the defendant. The reasoning is a little different in one against the other.

MR. FAHRINGER:

I see.

THE COURT:

Mr. Fahringer, as far as I am concerned, as I explained to you yesterday, the juries have had this business before them for many years. In my judgment it has never worked to the prejudice of any defendant. I have had extensive conspiracy trials and the jury decides the case on the facts and the law but here you would like me to do what?

MR. FAHRINGER:

Judge, my only request is that in reading the indictment to the jury either in the opening statement by the U.S. Attorney or you at the end of the case, that the word "unindicted co-conspirators", or the words "unindicted co-conspirators" be eliminated, that's all. I don't see that that detracts from their case at all.

THE COURT:

Except that certainly in argument or in paraphrasing the charge it has to be alleged these people were conspirators.

MR. FAHRINGER:

Judge, I would expect him to argue

Discussion.

that they are. That is his case.

THE COURT: Of course.

MR. FAHRINGER: What I am concerned about is the jury being told the grand jury found them to be such. I don't think that has any bearing on this charge.

THE COURT: Of course not, but I do not want any argument on your part at all. I just say this, that there is any failing here on the part of the Government to make any charge.

MR. FAHRINGER: Of course, your Honor. Your Honor, may I just tell you that we have agreed or at least we offered to actually stipulate that the voice on the tapes is Richard Todaro. That is to say, an actual stipulation that that is the fact, not to say if some witnesses were called to try, - I want to be very candid with your Honor, to eliminate all possibility of prejudice by the mention of Mr. Dragonette's name or Mr. Darico's name. We are prepared openly in this courtroom to do that at the appropriate time.

THE COURT: I would think that the jurors may

Discussion.

think, - they may know. Of course, none of them said they knew Darico or Dragonette but they may surmise they are police officers. I do not know.

MR. FAHRINGER:

Your Honor, so you understand, my point is, if we stipulate to the voice, I would then ask your Honor that there be no reference to Darico or - -

THE COURT:

Is that agreeable, Mr. Endler?

MR. ENDLER:

No, your Honor, and quite briefly why is, I talked to Mr. Fahringer earlier. There is three areas that we are going to have difficulty. First of all, when Mr. Hawley conducted searches at the Kenmore News Shop, Dragonette and Darico were there and he can't say "I went alone". Even if he said, "I went with two unnamed people", and secondly when Mr. Holmes made the transcripts, the reason he identified the voice was Dragonette and Darico said it. Otherwise, Mr. Holmes will say, "I picked out this conversation in February of 1972 because"

THE COURT:

What difference does it make why he picked out the conversation?

Discussion.

MR. ENDLER:

Because, your Honor, if we get into evidence or it is illicited from the evidence that in February, Mr. Dragonette and Mr. Darico stated that this person's voice they identify as Mr. Richard Todaro, was giving the line, then, you know, the FBI had probable cause to get a search warrant to search for gambling - -

THE COURT:

That is not for the jury to decide.

MR. ENDLER:

No, not the probable cause issue, but back in '72 did the FBI have knowledge when they were investigating whether Mr. Todaro was involved and this was his voice on the tape.

THE COURT:

Why should that make any difference? Let's take it away from a gambling case.

MR. ENDLER:

Yes, your Honor.

THE COURT:

And just put it into a case where the FBI has suspicions that a particular individual held up a bank and they get this idea from word passed to them by informers, even quite reliable informers.

MR. ENDLER:

Yes, your Honor.

THE COURT:

When you try the case what the suspicions are of the agents certainly is

Discussion.

not admissible in evidence.

MR. ENDLER:

I realize that.

THE COURT:

So I fail to get your reasoning here.

MR. ENDLER:

Well, just that, your Honor, when Mr. Holmes, the agent will testify, made this composite tape, the obvious question arises, is why did he pick these conversations. In other words, how did he identify, how did he make the composite tape, what basis did he have.

THE COURT:

Of course, the stipulation, - you stipulate that the voice we hear, - are there two voices?

MR. ENDLER:

Well, - there are actually, I think, about eight or nine on there. There is more than one.

THE COURT:

But then you will have transcript of conversation.

MR. ENDLER:

Yes, your Honor.

THE COURT:

And you stipulate that the voice on the tape which is indicated as Todaro on the transcript is in fact the voice of Richard Todaro, right?

MR. FAHRINGER:

That's correct.

Discussion.

THE COURT:

That is correct.

MR. ENDLER:

You stipulate?

MR. FAHRINGER:

Yes, I stipulate to that.

THE COURT:

The mental reasoning then on Mr. Holmes becomes unimportant.

MR. ENDLER:

Fine, your Honor, if that would be the stipulation.

MR. FAHRINGER:

That is the stipulation.

THE COURT:

It is like if you have any kind of a lawsuit, I mean you have an expert come in, a doctor, and he says, "I take into account", if you had a stipulation that the injuries to a particular individual were broken right leg or broken left arm and so forth, if you have a stipulation then the reasoning of the doctor becomes unimportant.

MR. ENDLER:

Fine, your Honor.

THE COURT:

All right. We are going to have, - in your opening you will not mention - -

MR. ENDLER:

No, I won't mention strike force and the crime section.

THE COURT:

And you will not mention unindicted co-conspirators.

MR. ENDLER:

I was not planning to read the

Discussion.

indictment, your Honor, but I was going to make reference to co-conspirators.

MR. FAHRINGER:

Your Honor, he can argue about whatever he pleases but I just don't understand, I just don't want it read out of the indictment.

THE COURT:

He can say "alleged". Have the jury come up.

MR. ENDLER:

Your Honor, also - -

THE COURT:

You are going to give instruction - -

MR. ENDLER:

Well, to Mr. Plumpton, your Honor, but one other thing I would like to quickly mention is the way this system is set up. The operator, Mr. Plumpton, can simply take out a plug, leave everyone's headset in except for the jury. Mr. Fahringer and I have agreed that one thing at the beginning of the tape will not be played so we will play to that portion and then hook in the jury so for maybe ten, twenty seconds they won't be hearing anything.

THE COURT:

You have those taped down to the - -

MR. ENDLER:

Well, taped as best we could, your Honor, but if any of the jurors push it could - -

Preliminary Instructions to Jury.

THE COURT:

All right.

MR. FAHRINGER:

I take it there is liability insurance,
your Honor.

(Jury returns to the courtroom.)

Government Exhibits Numbered 1 through
61, respectively and inclusive, marked
for identification.)

THE COURT:

Ladies and gentlemen, you will note
that there are some headsets and some
boxes and some wires there in the jury
box. We expect that we will use this
equipment during the course of the trial.
I know that you will, but I say this just
to be certain, please, when you are getting
up and leaving, or coming in, be careful
you do not become entangled with any of
the equipment and, of course, it is
sensitive and if you have the earphones
on before you get up to walk, you have to
take the earphones off. I know you will
apologize for me saying that to you, but
that is what I do all the time. I have

Preliminary Instructions to Jury.

the earphones on and I get up and start walking and get caught up short and I would not want that to happen to any of you.

We will begin the trial of this case now. The first step in the trial is that we will hear the opening statements of the attorneys. Mr. Endler for the Government will definitely make an opening statement. Mr. Fahringer may if he desires but he is not required to. He may wait until after the Government's case or he may dispense with it entirely. He is not obliged to offer any explanation here of any kind.

You will remember that the burden of proof is on the Government to prove guilt beyond a reasonable doubt and the defendant in any criminal case can rely upon an argument of mere failure of the Government to prove. They are not obliged to offer any evidence.

In opening statements you must keep in mind that this is a statement of what the Government expects the witnesses will

Preliminary Instructions to Jury.

testify to. It is a road map, it is a guide for you but it is not gospel because you may find after you have listened to the evidence that some of the things that the Government thought were going to happen during the course of the trial did not happen or perhaps there was additional testimony that was not referred to in the opening and it is your job to, of course, to listen carefully to the opening remarks so that you will better understand the testimony as it comes in but certainly you should not consider the statements of either one of the lawyers as facts in the case.

The facts can only come from the mouth of the witnesses and from the exhibits which will be offered into evidence.

We will, as we go on, give to you a detailed statement of the law which applies to this case. I do not think that is necessary to do at this time but you listen to the opening remarks now and keep an open mind in the case. Do

Opening Statement by Mr. Endler.

not make up your mind about any part of it until you have heard it all. Listen just as carefully to the cross examination of any witness as you do to the direct examination.

Mr. Endler, when you are ready, you may proceed.

MR. ENDLER:

Thank you very much, your Honor. Good morning, ladies and gentlemen. May it please the Court, Mr. Fahringer, Mr. Cambria, Mr. O'Keefe, ladies and gentlemen of the jury:

Ladies and gentlemen, my name is Richard Endler as you have heard. I will be the prosecutor for the Government during the course of the trial. Sitting at counsel table to my left right here and assisting me will be Mr. Dennis O'Keefe.

As you have heard, this will be the first of two occasions during the course of this trial when I will have the opportunity to speak with and address you directly. Except for these two occasions, one now during my opening remarks and one at the

Opening Statement by Mr. Endler.

end of the trial during the concluding or summation remarks. The attorneys do not have this opportunity to speak with you and address you directly. I would like to use this opportunity of addressing you, my opening remarks, to tell you very briefly, and I will try to keep my remarks brief, what this case is all about. That is, what the charges are and what the evidence that the Government expects to introduce will show. Before I address myself to these issues, however, I would like to make a few short general comments.

As you heard the Judge, his Honor, you should remember that an indictment is not evidence or proof of guilt. It is merely the form whereby a person is told what he stands accused of so that he may prepare his defense. Also, ladies and gentlemen, you should remember that the evidence in this case, as in all criminal cases, comes from one place and one place only and that is this witness stand and it is upon that evidence and that evidence alone that you must determine

Opening Statement by Mr. Endler.

whether this defendant, Richard Todaro, is guilty. Nothing, with few exceptions, that I say during this trial and nothing that Mr. Fahringer may say during this trial is evidence. You, ladies and gentlemen, are the sole judges of the evidence, the facts and testimony in this case.

The testimony you may hear, documents you may see, any exhibits you may inspect, and on that testimony and facts you will hear, you are the sole judges and you should remember basically what guilt is. Guilt consists of two basic things.

First, that a crime as charged in the indictment did in fact occur and secondly, that this defendant, seated in this courtroom, committed that crime as charged.

Now, specifically the indictment before us today charges this defendant, Richard Todaro, in three separate counts with three separate crimes. Now, you will have the opportunity to take this indictment with you to the jury room

Opening Statement by Mr. Endler.

during your deliberations and I'm sure during the course of this trial it will be commented to you so I will not read it at this time. I would, however, like to briefly comment on each of the charges.

Count 1 in brief, charges that this defendant, Richard Todaro between approximately October 15, 1970 and continuously thereafter until approximately March of 1972, conspired and combined with some four or five other people to conduct, finance, manage, direct and own all or part of an illegal gambling business. Then in the indictment there are some five overt acts set forth which it is alleged that the defendant or one of the conspirators committed in furtherance, - that is, to further the objects and aims of the conspiracy.

Count 2 in brief, charges that this defendant in fact did conduct all or part of an illegal gambling business.

Count 3, charges in brief, that on or about March 5, 1972, this defendant unlawfully destroyed certain paper, namely,

Opening Statement by Mr. Endler.

flash paper, in order to prevent its seizure by special agents of the Federal Bureau of Investigation who authorized to seize the paper pursuant to a search warrant.

Now, as you listen to the evidence and testimony in this case, and as you listen to any witnesses or documents or exhibits you may see, there are certain things the Government must show you in order to carry its burden of proof. With respect to Count 1, the conspiracy Count, I mentioned, you may remember among other things the Government must show you that this defendant conspired, - that is, he agreed with others to do an unlawful act.

Now, in this particular case the unlawful act that is charged is to conduct all or part of an illegal gambling business. The Government must also show you among other things that once this agreement has taken place, the defendant or one of the co-conspirators committed at least one overt act to further the conspiracy.

Now, with respect to Count 1, the

Opening Statement by Mr. Endler.

conspiracy Count and Count 2 the Government must show you among other things what an illegal gambling business is. Now, very briefly what that means is among other things that this gambling business was in violation of the laws of the State, in this case in violation of the laws of New York State.

Two, that this gambling business involved at least five or more people who either directed, financed, managed, supervised or conducted all or part of the business. This five people does not include mere bettors or persons who call in and place wagers. Also, that this gambling business had been in substantially continuous operation for at least thirty days or, in the alternative, in any single day, regardless of which day the members of this gambling operation accepted in excess of \$2,000 in gross wagers or betting action, betting activity.

With respect to the third Count, this unlawful, - allegation of unlawful destruction of certain property, among other things

Opening Statement by Mr. Endler.

the Government must show to you that there was some lawful process or court order authorizing search and seizure for the property. Two, that this defendant knew or should have known about it, and three, that sometime, either before, during or after this search, the defendant destroyed the property to prevent its seizure.

Now, there is no one witness who can come into this courtroom, take this witness stand and tell you this whole case. The case is similar to a puzzle. It is not until you have heard all the witnesses, seen and examined any and all documents that may be introduced and seen and examined all exhibits that may be introduced. It is not until that point that the picture is complete.

I would like, however, at this time to give you a brief overview of what the Government expects all the witnesses will say, what all the documents will show and what all the exhibits will show. I will not keep repeating myself by saying, "The

Opening Statement by Mr. Endler.

Government expects witness so and so to say this" or "The Government expects document so and so to show this". The Government does expect, however, that the testimony and documents that may be introduced will show the following:

During early 1972 and for some years prior thereto, Steve Castellani, his son Anthony Castellani, Mr. Richard Giglia, a Mr. Zak and a Mr. Silvani were operating an illegal gambling business at four different locations in and around the City of Buffalo. One was at the Kenmore Newstand on Delaware Avenue in Kenmore, New York. Two was at the Riverside Newstand on Tonawanda Street in Buffalo, New York. The third was a telephone located in an apartment on Terrace Boulevard in Depew, New York. The fourth was a telephone located in an apartment on Ontario Street. In these four separate locations, the two apartments and the two newstands, these people I have mentioned, accepted gambling wagers on various sporting events and horse events, horse races.

Opening Statement by Mr. Endler.

As you will hear, this was a successful gambling business. It involved in excess of five people who managed, directed, conducted all or part of the gambling business. It was in operation for well in excess of thirty days. Its gross revenues were well in excess of \$2,000 every day.

You will also hear that every day these people accepted gambling wagers on various sporting events, racing events, horse racing events and the following day they would meet every morning at the Kenmore newstand to balance their books. That is, to tabulate who the winners were, who the losers were. In other words, to settle up with their customers.

Now, ladies and gentlemen, in order to keep this gambling business profitable and ongoing, these people I have mentioned had to know in each event, each sporting event, which team, if any, was favored to win the game; which team was expected to lose the game; by how many points; what the price spread was; what the odds were

Opening Statement by Mr. Endler.

of any team winning or losing a given game. In other words, these people very briefly, had to know what the current line information was on each game before they could accept a gambling wager.

Ladies and gentlemen, Mr. Todaro, this defendant, gave that line information to Mr. Castellani, Mr. Giglia. He gave it to them and would get paid for it by them for his services. Almost every day in the month of February, 1972, this defendant would call either the telephone at Depew Street, the telephone at Ontario Street and give Mr. Castellani and Mr. Giglia this line information. Mr. Castellani and Mr. Giglia would then, moments later turn around and give this exact line information out to the betting customers and once this had been done they would then accept bets.

You will also hear, ladies and gentlemen, that during the same time period the Federal Bureau of Investigation was conducting an official investigation. Pursuant to a court order they were

Opening Statement by Mr. Endler.

authorized to electronically surveil, that is, monitor conversations occurring on these two telephones, the one on Ontario Street, the one on Terrace Boulevard. It is expected you will hear the voice of Richard Todaro during the course of this trial, call in to these gambling locations and talk to Mr. Castellani or Mr. Giglia and give the current up-to-date line information.

It is expected you will also hear from Mr. Castellani and Mr. Giglia. It is expected that they will tell you that once they received this line information from the defendant, then and only then, could they relay this information to their bettors and then and only then, could they accept bets and wagers.

It is expected you will also hear what this line information is; how important it is. You will hear that on three nights in February of '72, 1972, there was no person calling in and giving the line information. On those three nights this gambling operation closed down, did

Opening Statement by Mr. Endler.

not accept any bets on any sporting events and did not, until Mr. Todaro would call again with the line.

You will also hear that on or about March 6 of 1972, special agents of the Federal Bureau of Investigation obtained search warrants for Mr. Todaro's residence in Tonawanda and his person. They went to his residence in Tonawanda, announced their identities and their purpose for being there. However, as you will hear, ladies and gentlemen, when the defendant heard their identities, heard their purpose for being there, he took certain property, flash paper which it is expected you will hear about, took a cigarette lighter and destroyed it before the agents could seize it.

Ladies and gentlemen, he destroyed the paper before the agents could seize the records pursuant to a search warrant which authorized them to search for and seize those very records.

That, ladies and gentlemen, is very briefly an overview of the facts and the

Opening Statement by Mr. Endler.

charges in this case and quickly an overview of the testimony and exhibits you may or may not hear during the next few days. This brief outline I have given you has merely been an aid to assist you as you listen to any witnesses who may testify or see or examine any documents that you may see or may be introduced into evidence and it is submitted to you that when you have heard all this evidence, seen and examined any documents or exhibits that may be entered into evidence you will be convinced beyond a reasonable doubt that the three crimes that were charged in the indictment were, in fact, committed; that the crime of conspiracy to conduct all or part of an illegal gambling business was, in fact, committed; that the crime of conducting an illegal gambling business was in fact committed; that the crime of unlawfully destroying evidence to prevent its seizure was, in fact, committed; that this defendant, Mr. Todaro seated in this courtroom committed those crimes as charged in the indictment and therefore is guilty

Opening Statement by Mr. Fahringer.
as charged in the indictment.

Thank you very much.

MR. FAHRINGER:

May it please your Honor, Mr.
Endler, Mr. O'Keefe, ladies and gentlemen
of the jury;

It is my privilege to represent
Richard Todaro in what will undoubtedly
be the most important moment of his life.
Now, until yesterday you had never met
me before and I had never met you and I
expect our acquaintance here will be a
relatively short one but I would like to
start it off by being completely forth-
right and candid with you and explaining
to you in some detail what we expect to
prove in this case.

First of all, let me introduce to
you Paul Cambria who is seated with me
at counsel table who is associated with
me in my office. You hadn't met him
yesterday and I thought you ought to know
who he is.

Now, you have been told we don't
have to make an opening statement and that
is because the defendant is presumed to

Opening Statement by Mr. Fahringer.

be innocent and so if I had elected to or had I wished to we could sit there and I could stand up and say we waive our opening and offer you no evidence at all but I think you are entitled to know right at this very moment exactly what we are going to prove and what this case is really all about.

First of all, you should know something about Richard Todaro which we are going to prove. He was born and raised in the City of Buffalo. He lives at 52 Bannard Street with his wife Rosalie and their four children, Linda, Richard, David and Joel.

Back, I guess it was in 1973 an indictment was returned here. Now, the proper place to begin, it seems to me, is with the charges. You have been told that this Federal offense is a rather particular one and bear in mind Mr. Todaro stands charged in this courtroom with a Federal gambling felony, not a State violation in the sense of the word, that he has to come within the Federal law and

Opening Statement by Mr. Fahringer.

I'm not going to get into the law here but what I want you to understand is that it will be our defense in this case that he hasn't violated the Federal law and I will try to make that apparent to you as we proceed but I am going to have to ask your indulgence because we are dealing with a very technical statute here and we don't have a simple situation was he there or wasn't he there, but we are concerned really with following the letter of the law which will be given to you at the appropriate time and then you have to decide, for instance, has, did Mr. Todaro conduct, finance, manage, supervise this illegal gambling operation that is identified in the indictment and that's the reason why I think it is important that we begin with the indictment. That's the blueprint. That's the plan, as it were, that the Government must build its house of proof on and if they don't fulfill the accusation and if they don't come up with sufficient evidence to convince you beyond a reasonable doubt of

Opening Statement by Mr. Fahringer.

what they have charged in the indictment then I think you will be told that you will have to return a verdict of not guilty so I would like to take with you right now each one of these counts and discuss in some detail what we intend to prove.

Now, the first Count of the indictment charges a conspiracy and I would like to just read to you one portion of that. They charge that Richard Joseph Todaro did unlawfully conspire, combine and agree with these other persons who have been named to you to conduct, finance, manage, supervise, direct or own this illegal gambling operation involving a horse and sports bookmaking operation.

Now, Count 2 charges that not only did he agree and combine with these people that he actually did, - that is to say, he, Richard Todaro did finance, manage, conduct, supervise and own this illegal bookmaking operation, and Count 3, I want to discuss with you a little later on because I think Mr. Endler misstated

Opening Statement by Mr. Fahringer.

something to you inadvertently. That section does not provide and he has not been charged with destroying the evidence. There is a big difference. That section deals with property. A piece of property is quite different from a piece of evidence and we will prove to you that this was not evidence. He destroyed a piece of property. That is what is accused in the indictment. There is never any claim here, accusation, any charge that that was evidence and I think that is important.

Now, I am entitled to tell you that when this accusation was returned against Mr. Todaro, he came into this courtroom and he entered a plea of not guilty and that is a fancy legal way of saying, "I didn't do it, I didn't conduct, manage, finance, supervise, own this illegal gambling operation". That doesn't say he didn't make a phone call. That doesn't say he didn't talk to them, and I will deal with that in some detail in just a moment. What he said is, "I didn't conduct

Opening Statement by Mr. Fahringer.

this operation. I didn't manage it. I didn't supervise it. I didn't own it", and he has stood on that denial to this very day.

Now, quite aside from what our defense here is that he didn't conduct, manage and own this bookmaking operation, is the element that you will have to be satisfied with proof beyond a reasonable doubt that there were five or more men that were conducting and managing and owning and supervising this operation and the other elements. We are not as much concerned with that but we may out of an abundance of caution, we may object to that because if there weren't five who are operating it and running it and managing it and doing all the things that you will be told about then there was no Federal offense, but certainly, even if there were and he was not one of the five that was conducting and managing and running it then he cannot, we will argue at the end of this case, be found guilty.

It is a very technical statute and I

Opening Statement by Mr. Fahringer.

think an offense of this kind, a charge of this kind puts our jury system to its greatest test because you will have to concentrate, you have to say "Has the prosecution proved the first element, were there five or more persons who did all these things". If there were five or more did it run for more than thirty days, consistently, consecutively, and if it did that or it didn't do that did they actually do more than \$2,000 in any one day.

Now, I want to tell you, we have by way of pre-trial procedures been given notice of what witnesses they expect to call and by that we anticipate that they are going to bring into this courtroom Steve Castellani. He is the man who admittedly operated this alleged bookmaking operation. They will bring into this courtroom Anthony Castellani. They will bring into this courtroom Richard Giglia. We have been told that they are their witnesses.

I am going to make a commitment to you

Opening Statement by Mr. Fahringer.

now. I believe if these people testify forthrightly and honestly as I have every right to expect that they will, they will tell you that Richard Todaro had no part of this operation, he didn't ever place a bet with them. In eighteen months of investigation he never did anything with them, he never got any commissions from them, he never shared in the proceeds of their operation. They will tell you in their own words as they have, I believe, testified before, "He had nothing to do with our operation, he didn't even bet with us".

Now, this illegal bookmaking operation as accused in the indictment went on for eighteen months. That is almost or a little more than five hundred days. In the indictment the accusation specifically is that on five days out of five hundred Richard Todaro had been contacted & called them and gave them some odds, gave them some figures, five days out of five hundred. The proof in this courtroom may show that it was ten days.

Opening Statement by Mr. Fahringer.

You heard Mr. Endler say to you that almost every day in the month of February. Well, let's be specific. Let's talk precisely. How about the 16th of February, the 19th of February, 20th, 21, 22, 24 and maybe 25. Out of 500 days, 18 months Mr. Todaro and we, I want to tell you something, - I am not going to play games. We stipulate in this courtroom. We stipulate it is his voice on that tape. We stipulate he called. We stipulate he gave them some odds.

THE COURT: Excuse me, Mr. Fahringer.

MR. FAHRINGER: Yes.

THE COURT: This, I think is, - I think it can be said but I want to talk to you and Mr. Endler about this problem because I think this is in the nature of summation.

MR. FAHRINGER: I am sorry.

THE COURT: The fact is you are going to stipulate, period.

MR. FAHRINGER: I am sorry.

THE COURT: As to any argument that follows from that, I want to talk to you about it.

MR. FAHRINGER: Thank you. We will prove, let me put

Opening Statement by Mr. Fahringer.

it this way to you, that we will prove it is his voice, but we will also prove to you through the Government's own witnesses that calling, giving these odds does not constitute conducting or owning or managing this illegal bookmaking operation. As a matter of fact, I want to be very frank with you, we expected to prove to you through the Government's own witnesses, hopefully, that the line, the odds, the point spread, whatever might be is derived from a number of sources.

We expect to prove to you that any bookmaking operation will check sometimes with a number of different sources. You can get the line from the newspaper. I suppose you know that, that the line is in the morning paper and we're going to prove that to you. We are going to prove to you that you can buy a dozen tip sheets and you can get the line from the tip sheets. We are going to prove to you that bettors, handicappers, people who are sharp and who follow a sport, follow the horses, follow basketball, follow hockey,

Opening Statement by Mr. Fahringer.

will make up their own line. Just because someone says that Buffalo is favored, - the Celtics are favored over Buffalo tonight by 4 points doesn't mean somebody else doesn't have a different opinion. It is a prediction.

Now, this is important in our defense for this reason, that we will argue to you at the end of this case after you hear all of the evidence that isn't conducting, that the operation, - that is to say, and Mr. Endler just said to you something that is awfully important in this case. He said to you that it was essential that they close down for three days when they didn't get the line. Well, we are going to prove something different to you about that. We are going to prove to you that they didn't close down because they couldn't get the line. We are going to prove something else to you if you will be patient and keep an open mind throughout this case.

Richard Tedaro is alleged and accused of a one week period of time, maybe ten days and we are going to prove to you why

Opening Statement by Mr. Fahringer.

it was that during that isolated period they contacted him and asked him for his figures, his odds on these games. You will know why it happened at that time and it did not extend over this entire period of time. There are occasions and we are going to concede this, we are going to happily stipulate to it if we have to that Mr. Todaro contacted these people when they contacted him but that we will argue under the law, that does not constitute financing, managing, supervising, owning or running this alleged bookmaking operation.

Now, let me just, if I may, address myself to the last part of this. There isn't any question that there was a wire tap order here and they heard Mr. Todaro's voice on the phone and so when arrest warrants or search warrants were issued they issued one for his home at 52 Bannard. They went over there early in the morning and he was sound asleep in bed. We are going to prove that. The wife and children were out and he was all alone in the house.

Opening Statement by Mr. Fahringer.

They went to the front door and announced themselves. We are going to prove he was sound asleep on the second floor. They went around to the back door. The back door was open, unlocked. They walked in, went in the house, said, "FBI", and then came running up the stairs. We are going to prove to you that he was in his pajamas and he jumped out of bed and he burned a piece of flash paper, a single piece of flash paper. They never accused him in this indictment that that was evidence. No one will come into this courtroom and testify there were any records on that or anything. We are going to prove to you because we are in a Federal Court, we are going to prove to you that it is a State offense, it is a State crime to possess a piece of flash paper. It is a misdemeanor and so he burned it. We also hope to prove to you that it is not a Federal offense to possess flash paper but he burned a piece of flash paper. There is no claim here he burned evidence. There is no claim here he burned any records.

Opening Statement by Mr. Fahringer.

He burned a piece of flash paper and that is what this case is all about.

They searched his home. We will prove to you they did not find one bit of gambling information, gambling paraphernalia, tally sheets, line sheets; they didn't find anything. We are going to prove to you they didn't arrest him. They arrested other people that day, took them into custody. We are going to prove to you they walked out of the house, left him there and that was the end of it.

Now, in closing, let me just say this to you; we have to wait, as the Judge explained to you, until after a witness testifies. He may be on the stand for two hours. He may be on the stand for forty-five minutes. He may be on the stand for fifteen minutes and then we will be allowed to get up and cross examine. Some things in this lawsuit, I tell you right now, as a part of our case, we are not going to contest. There will be witnesses I may not ask any questions of at all. You are going to hear an awful

Further Preliminary Instructions to Jury.

lot in this lawsuit about the so-called Castellani bookmaking operation and it is our defense right now that we had nothing to do with that. We may object to the evidence but we will hear a lot of that proof, a lot of that evidence, which we will urge at the end of this case, has nothing to do with us, but in closing, let me tell you this, where Richard Todaro sits is the loneliest place in the world and you are here to see that he gets a fair trial in partnership with this court to see that the rights that are given him under the law are enforced and protected. I promise to you right now, if you do that, if you follow your oaths as jurors, if you follow the law that is given to you by Judge Curtin, if you obey your consciences we will have no reason, no reason in the world to fear your verdict because there will be only one verdict you can return in this case under the Federal law and that is not guilty on all counts. Thank you very much.

THE COURT:

Ladies and gentlemen, before we begin

Further Preliminary Instructions to Jury.

to hear the evidence, I think a very brief comment may be in order and that is that the statutes here, our Federal Statutes, one of them is fairly complicated. It is not so complicated that it cannot be understood but it is very complicated and it is important that all of the elements of a particular statute must be satisfied.

For the present I think it best than rather we get into a discussion of the law now, that you just listen carefully to the evidence but keep in mind as you listen to it that in this case here it is necessary for the Government to prove the elements of the crime charged. It is not sufficient to find a man guilty if you may find that, for example, he violated a State law or he did something which looked suspicious or he did not conduct himself in a polite fashion, and certainly none of those is a crime. You must find beyond a reasonable doubt that the particular charge in the indictment and the particular statute charged in that count is violated. We will

Further Preliminary Instructions to Jury.

hear more about that later.

Mr. Endler, you have your first witness ready?

MR. ENDLER: Yes. The Government calls Ronald Hawley, please.

MR. FAHRINGER: Your Honor, I assume there is a separation of witnesses.

THE COURT: If there are any witnesses here who will be called in the trial, please step into the corridor.

(Court Exhibits Numbered 1 through 16, respectively and inclusive marked for identification.)

* * * * *

Ronald Hawley for Government, Director

R O N A L D H A W L E Y (575 North Pennsylvania Avenue,
Indianapolis, Indiana), a witness called by and in behalf of
the Government, having been first duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION BY MR. ENDLER:

Q Mr. Hawley, could you tell us how you are employed,
please?

A By the Federal Bureau of Investigation.

Q And how long have you been so employed?

A Approximately nine years.

Q And could you tell us where you are now currently
assigned?

A Indianapolis, Indiana.

Q And how long have you been assigned to the Indianapolis
field office?

A Oh, since February.

Q And prior to February of 1976, could you tell us where
you were employed at that time?

A Here in Buffalo.

Q And could you tell us how long you were employed with
the Buffalo field office?

A Approximately seven years.

Q Now, directing your attention back to the latter half
of 1971 and January, February and March of 1972, were

Ronald Hawley for Government, Direct.

you so employed as an FBI agent at that time?

A Yes, sir.

Q And were you so assigned to the Buffalo field office at that time?

A Yes, sir.

Q And directing your attention once again back to these time periods, the latter half of 1971 and the first three months of 1972, did you have occasion as part of your official duties as a special agent with the FBI to conduct an official investigation concerning a gambling business in the City of Buffalo here?

A Yes, I did.

Q And were you what is commonly called the case agent on this investigation?

A I had a case assigned to me, yes.

Q And were there other special agents of the FBI working with you and under your direction on this investigation?

A Yes, from time to time.

Q And these other agents of the FBI, did they report to you and discuss with you on a daily basis what, if anything, they discovered?

A Yes. More so toward the end than in the beginning. I don't know whether it was on a daily basis, but sometimes, yes.

Q Now, were you aware of everything that was going on during

Ronald Hawley for Government, Direct.

the course of this investigation, sir?

A. Yes, sir.

Q. Could you tell us, sir, where, if anywhere, your investigation disclosed, this gambling investigation or this gambling operation was being conducted?

MR. FAHRINGER: I object to that as being irrelevant, incompetent and immaterial to our case, your Honor.

THE COURT: Mr. Endler - -

MR. ENDLER: Yes, your Honor.

THE COURT: Maybe I did not understand. You do not want to go into suspicions?

MR. ENDLER: No.

THE COURT: Why not rephrase your question.

BY MR. ENDLER:

Q. Sir, during this same time period, directing you back to the latter half of 1971 and approximately the first month or month and a half of 1972, could you tell us, sir, this official investigation you conducted, sir?

A. Yes. It was an investigation we conducted surrounding activities of the Kenmore News Shop located near the corner of Kenmore Avenue and Delaware Avenue in Kenmore.

Q. So, during this time period, were you as part of your official duties with the Federal Bureau of Investigation,

Ronald Hawley for Government, Direct.

familiar with the premises known as the Riverside News Stand?

A Yes, sir.

Q Can you tell us at that time, the same time period, where, is any that was located?

A It was located near the corner of, I believe it was, Tonawanda and Ontario Street. It had a Tonawanda Street address. It was also owned by some of the individuals that owned the Kenmore News Shop, owned and operated.

Q Sir, can you tell us if, during the same time period, once again the latter half of '71 and the first two months or month and a half of 1972, whether you were familiar with the premises known as Ontario Street in Buffalo, New York?

A Yes. We determined in our investigation - -

MR. FAHRINGER: I object, if it please your Honor.

THE COURT: You said "Ontario Street". Do you have a number?

MR. ENDLER: That was my next question, your Honor.

THE COURT: All right.

THE WITNESS: Well, the number was, the address, if I recall correctly, was 387, - I believe it was 387 Ontario Street and it was one of the bookmaking locations or

Ronald Hawley for Government, Direct.

what we refer to as a wire room.

MR. FAHRINGER:

Your Honor, I will object to that.

THE COURT:

I will strike the "bookmaking".

That is an opinion. Mr. Endler, maybe you are going to have to, in order to tie things together, you are going to have to have the agent testify at particular times that he was familiar with or he went to certain locations.

MR. ENDLER:

Yes, your Honor.

THE COURT:

And what businesses were at certain locations but I do not think we should have any reference to bookmaking or anything like that. He saw certain people at certain locations. We would hear that.

MR. ENDLER:

Right.

THE COURT:

But I think it is at a too early a stage in the litigation to have anybody making judgments or opinions.

MR. ENDLER:

Fine, your Honor.

THE COURT:

Or what the results of his investigation were. He can tell us where he went, what he saw and so forth.

BY MR. ENDLER:

Q Sir, during this time period, can you tell us who, if

Ronald Hawley for Government, Direct.

anyone your investigation disclosed was the owner of
the Kenmore News Shop in Buffalo, New York?

MR. FAHRINGER: Your Honor, I have to object to that.

THE COURT: No, he can, - I will permit that.

THE WITNESS: Yes. The investigation showed that
the owner was Steve Castellani.

BY MR. ENDLER:

Q Sir, can you tell us whether or not you conducted any
investigation during this time period to determine
whether or not a telephone was located at 387 Ontario
Street in Buffalo, New York?

A Yes, I did.

Q And can you tell us whether or not your investigation
disclosed if there was a telephone in that apartment?

A Yes, sir.

Q Can you tell us, sir, during this time period, - the
same time period, - just were you familiar with the
fact that there was an apartment located at 476 Terrace
Boulevard in Depew, New York?

A Yes, sir.

Q Sir, can you tell us whether or not you conducted any
investigation to determine if there was a telephone
located in 476 Terrace Boulevard?

A Yes, I did.

Ronald Hawley for Government, Direct.

Q Can you tell us what, if any, were the results of that investigation?

A Well, there was a phone listed in that apartment. I believe it is Apartment 7 and the phone was listed to an individual by the name of Jack Farrell.

Q Sir, referring once again to the results, if any, of your investigation as to the telephone located at the 300 block of Ontario Street, - I believe 387, can you tell us, sir, what, if anything, your investigation disclosed as to the owner, if any, of that telephone?

A The phone was listed to a waitress who, at that time I believe, was working at the BAC. I can't recall, - I think her first name was Julie. I can't recall her last name at this time.

Q Sir, during the months between September of 1971 and February 16th of 1972, did you and the other agents of the Federal Bureau of Investigation have occasion to conduct, if any, physical surveillances of these four locations we have just mentioned?

A Yes, we did.

Q Can you tell us, sir, if based on these physical surveillances that you and the other agents conducted during this time period, you can tell us whether or not your investigation disclosed if anyone was working at the Kenmore News Shop?

Ronald Hawley for Government, Direct.

MR. FAHRINGER: Well, your Honor, I think that calls for a conclusion.

THE COURT: It does. I will strike "working". He may tell us who was there and then perhaps further questioning may bring out what happened.

BY MR. ENDLER:

Q Sir, during this same time period, can you tell us as a result of your physical surveillances, who, if anyone, was at the Kenmore News Shop on a continuous daily basis during this time period I have mentioned?

A Yes. During - -

MR. FAHRINGER: Your Honor - -

THE WITNESS: During the early morning hours - -

THE COURT: Excuse me. There is an objection.

MR. FAHRINGER: "Continuous daily basis", your Honor, I think calls for a conclusion.

THE COURT: No. I think that is quite definite. If they were not there almost every day then we would not hear their names. I will overrule the objection. Kenmore News Shop, period September '71 to February '72.

THE WITNESS: Yes. During that period during the morning hours, Richard Giglia and Joseph

Ronald Hawley for Government, Direct.

Silvani would be in the shop together.

THE COURT:

What was the second man's name?

THE WITNESS:

Joseph Silvani. Ususally later on in the morning, Steve Castellani would arrive around 10:00 o'clock or somewhere in that general area. The afternoon hours an individual by the name of Thomas Spienza would appear at the Shop and generally stay there the rest of the afternoon. There would be others in the morning in the Shop that would be there for long periods of time other than customers, individuals like John Zak.

BY MR. ENDLER:

Q Sir, during this same time period, - that is approximately September of 1971, up to and including approximately February 16th of 1972, can you tell us who, if anyone, on almost a daily basis, a continuous basis, was observed by the physical surveillance agents at the Riverside News Stand?

MR. FAHRINGER:

Same objection, your Honor.

THE COURT:

Riverside?

THE WITNESS:

Yes. That would be Anthony Castellani would be in there at all - -

Ronald Hawley for Government, Direct.

THE COURT: Excuse me. You say by the surveilling agents. Is this by you, Mr. Hawley?

THE WITNESS: Yes, sir, me and agents that worked under my direction.

THE COURT: But you were there?

THE WITNESS: Yes sir, many times.

THE COURT: And you saw these people?

THE WITNESS: Yes sir, many times.

THE COURT: On this daily basis?

THE WITNESS: Yes.

THE COURT: All right. Riverside, who did you see there?

THE WITNESS: Anthony Castellani would be there most of the time along with an individual by the name of Guy Puglese or Puglisi or something.

BY MR. ENDLER:

Q Sir, during this same time period, did you have occasion to conduct an official investigation to see who, if anyone, lived at the apartment at 387 Ontario Street, Buffalo, New York?

A Yes. We attempted to determine who Jack Farrell was through documentation, driver's license or possible - -

THE COURT: Mr. Hawley, I think it is best for

Ronald Hawley for Government, Direct.

your response, the question is, as I understood it, was who did you see at 387 Ontario Street at the same time period.

BY MR. ENDLER:

Q Okay, your Honor. I will repeat my question. I am very sorry. Sir, during this time period, did you and other agents working under your supervision, conduct an investigation to see if anyone, who if anyone, was listed or was the owner, if that is the correct term, or the rentee of the apartment located at 387 Ontario Street, Buffalo, New York?

A Yes, we did.

Q Can you tell us the results of your investigation as to who, if anyone, was the owner or leasee, whatever?

A Well, there was a woman listed as being the subscriber to the phone and according to the telephone records was employed as a waitress at a grill and also employed, I think, at Buffalo Athletic Club. Her name was Julia, and I'm not sure, but if I'm not mistaken, her last name was Martin.

Q Sir, during this same time period, once again September of 1971 up to and including February of 1972, did you and other agents have occasion to conduct physical surveillances of this premises, namely 387 Ontario Street, Buffalo, New York?

Ronald Hawley for Government, Direct.

A Yes, although I don't think I conducted any myself at that particular location.

Q Well, did other agents of the Federal Bureau of Investigation, to your knowledge, conduct surveillances during this time period?

A Yes sir, they did.

Q Now, sir, did you also conduct or you and other agents have occasion to conduct an investigation to see who, if anyone, was the owner or leasee, once again, of the apartment located at Terrace Boulevard in Depew, New York, I believe 476 Terrace Boulevard, Depew, New York.

A Yes. We did the same thing there attempting to determine who the person was that paid the rent and the individuals name was Jack Farrell, according to telephone records and by going through driver's license and other investigations we couldn't find the - -

MR. FAHRINGER: I object to that, if the Court please.

THE COURT: I will sustain that objection.

BY MR. ENDLER:

Q Sir, during the same time period, did you and other agents of the Federal Bureau of Investigation, have occasion to conduct official surveillances of the apartment located at Terrace Boulevard in Depew, New York?

A Yes, sir.

Ronald Hawley for Government, Direct.

Q Now, sir, during the time period in which you and other agents of the FBI conducted these official physical surveillances of the apartment on Terrace Boulevard in Depew, could you tell us if, - who if anyone, that you had previously observed from the Kenmore News Shop or the Riverside News Shop, frequented this apartment on Terrace Boulevard?

MR. FAHRINGER: Your Honor, only if he can testify to his personal knowledge, that would be the nature of my objection.

THE COURT: You personally, Mr. Hawley.

THE WITNESS: Yes, sir. No sir, not based on a daily basis as far as I am concerned. I think on one or two occasions I saw Steve Castellani frequenting 476 Terrace Boulevard. There were more surveillance run than that but not by myself.

BY MR. ENDLER:

Q Did you have occasion, sir, to personally conduct any physical surveillances on the Ontario Street, 387 Ontario Street apartment?

A Yes. No, no, I didn't.

Q Now, sir, on or about February 16th of 1972, did you have occasion to appear before the Honorable John O.

Ronald Hawley for Government, Direct.

Henderson, Federal District Judge, in regard to some wire tap applications?

MR. FAHRINGER: This is objected to, if it please your Honor.

THE COURT: We do not have to go into the details of this at all. I will sustain the objection.

BY MR. ENDLER:

Q Well, sir, I would like to show you what has been pre-marked as Government Exhibit Number 6 for identification. I just asked if you can identify that.

THE COURT: Is this the order of the Court?

MR. ENDLER: The order and application and the affidavit.

THE COURT: If that is what it is it is a matter of Court record. We do not have to have any testimony from Mr. Hawley about this. Mr. Fahringer, this order, good, bad or indifferent was granted.

MR. FAHRINGER: Absolutely, your Honor.

THE COURT: Very well.

BY MR. ENDLER:

Q Sir, pursuant to this order, could you tell us what, if

Ronald Hawley for Government, Direct.

anything, you did?

A After the order was granted, we had a meeting in our office and we directed certain agents to install equipment which would be capable of monitoring conversations either over telephones or oral conversations inside the News Shop.

Q Sir, can you tell us what locations or telephone facilities if any, you, pursuant to the order, installed this mechanical device you are talking about?

MR. FAHRINGER: Please, your Honor, may I just make a standing objection in terms of our pre-trial motions?

THE COURT: Yes.

MR. FAHRINGER: I object to all of this relating to electronic surveillance.

THE COURT: That is understood, Mr. Fahringer, and I deny your motion.

MR. FAHRINGER: Thank you.

THE WITNESS: I did not install any electronic equipment myself, electronic devices, but I did direct other agents to do so at 387 Ontario Street, upper, which was the apartment mentioned earlier here, owned or rented by a Julia Martin. Also another location which was a telephone intercept

Ronald Hawley for Government, Direct.

at 476 Terrace Boulevard in Depew, New York, and that was Apartment 7, and also we installed a microfilm installation in the Kenmore News Shop which would be capable of intercepting and transcribing, - monitoring oral communications inside the News Shop itself.

BY MR. ENDLER:

Q Sir, I think, I believe you stated just before, that you yourself did not personally do this. Did some other agent of the FBI do this?

A Yes, sir.

Q Could you tell us his name, please?

A Bill Holmes.

Q Special Agent William Holmes?

A Yes sir, and Vinny Plumpton.

Q Do you know of your own personal knowledge though, sir, whether or not these devices were implemented? In other words, put into operation or whatever?

A Yes, I do. One was put in in my presence, the one in the Kenmore News Shop and because of the monitoring process, I did know that the others were installed.

Q Can you tell us, sir, what period of time, if any, you were authorized to install these devices?

Ronald Hawley for Government, Direct.

A Well, it was somewhere - -

THE COURT: For this purpose you are entitled to perhaps the order. You do not have to do it now but check with Mr. Fahringer first and maybe we will read the order so the jury will understand what the direction of the Court was, but as far as periods of time this was authorized, you can refer to the order.

MR. ENDLER: May I have the witness refer to the order, your Honor?

THE COURT: Yes.

BY MR. ENDLER:

Q I am showing the witness what has been marked as Government's Exhibit Number 6 or pre-marked for identification. Sir, could you tell us what time period, if any, you were authorized to install these devices you mentioned?

A I can't find the date on this order.

Q I am sorry, I am not asking - -

A What are you asking?

Q I will repeat my question. Can you tell us for what period of time, if any, in other words, the duration?

A The duration?

Ronald Hawley for Government, Direct.

Q That you were authorized to conduct this surveillance?

A Fifteen days.

Q And is this fifteen days as to each of the three locations you mentioned, sir?

A Yes, sir.

Q Now, can you tell us, sir, of your own personal knowledge - -

THE COURT: Excuse me, Mr. Endler. Is this from the date of the order to fifteen days after? Can you find that?

BY MR. ENDLER:

Q Sir, can you tell us what is the date of the order?

A Well, the date the Judge signed it was February the 16th and - -

Q Excuse me. February 16th of what year?

A 1972. I am sorry.

Q And can you tell us the fifteen days you are talking about, when does that start to run?

A That starts the day that he signed the order.

Q February 16th?

A Yes, sir.

Q Can you tell us, sir, for what period of time, if any, you did, in fact, install this electronic surveillance listening device if I may break it down to each of the locations separately?

Ronald Hawley for Government, Direct.

- A Without looking at the other papers, I believe one location was monitored for thirteen days, I believe. In fact, I believe two of them were monitored for approximately thirteen days and one for eleven or twelve days.
- Q Excuse me. I would like to show the witness what will be marked as Government Exhibit Number 65, I believe, for identification, and ask if you can identify that document?
- A Yes, I can. This is the return that I made to the Court based upon the wire tap.
- Q Is that your signature that appears on Page 2, sir?
- A Yes, it is.
- Q And can you tell us the date, if any, that appears on Page 2 of that document?
- A Okay, on Page 2 is the second day of March, 1972.
- Q Sir, can you tell us now with regard to each of the three locations separately, for what time periods, if any, you and the other agents conducted this electronic surveillance?
- A Okay. On Wednesday, February 16, 1972 the order was signed. Pursuant to that order, we installed a telephone tap on that same day at telephone Number 681-2509 and we monitored that telephone intercept until February 29, 1972, and that telephone was at 476 Terrace Boulevard. On

Ronald Hawley for Government, Direct.

February 16th, we placed an intercept at telephone Number 877-4347 and we monitored that telephone number until February 27, 1972 and that was at 387 Ontario Street. On February the 18th, we placed an intercept at the Kenmore News Shop and we ran that intercept until February 29, 1972.

Q Sir, pursuant to the implementing of this order that we have referred to, Government Exhibit Number 6 for identification, can you tell us what, if anything, you and the other agents of the Federal Bureau of Investigation obtained?

A From these intercepts?

Q Yes, from the implementation of these intercepts?

A We obtained 42 or 43 reels of tape.

Q At this time, sir, I would like to show you what has been pre-marked as Government's Exhibits 16 through 53 and ask if you could take a look at what is contained in this box in front of you, sir?

A Yes. These are the reels of tape that came from the three intercepts that I just mentioned earlier.

Q Now, sir, can you tell us if you and other special agents of the Federal Bureau of Investigation in any way numbered these reels or put something on them to designate one from the other?

A Yes. On the back they are all numbered individually with

Ronald Hawley for Government, Direct.

USDC WDNV and the Number 21.

Q Sir, now just taking one, for instance here on these, it is the one that has been pre-marked as Government Exhibit Number 56. On the side there is a notation, I believe "A-41", is that correct?

A Yes.

Q And I notice on all the others contained in the box there is a similar notation, A-1 through A-43, is that correct?

A Yes, sir.

Q Is that a numbering process you used to sequentially number the tapes?

A Yes.

Q A-1 being - -

A The first.

Q And A-43 the last in the series of 43, is that correct, sir?

A Yes, sir.

Q Sir, on or about March 5th, - excuse me. Sir, on or about March 5th of 1972, did you have occasion to appear before Magistrate Edmund F. Maxwell?

A Yes, I did.

Q I now show you what has been pre-marked as Government Exhibit Number 5 for identification and ask if you can identify that document, sir?

Ronald Hawley for Government, Direct.

A Yes. This is an affidavit that I - -

MR. FAHRINGER: Objection, if your Honor please.

The order is a matter of record and I
will argue that - -

THE COURT: Again, we do not have to go into
details, but perhaps on the time span - -

MR. FAHRINGER: Fine, your Honor.

BY MR. ENDLER:

Q Can you tell us, sir, by looking at the document, whether
or not your signature "Ronald Hawley" appears on that?

A Yes, it does.

Q And can you tell us the date, if any, that appears
thereon?

A March the 5th, 1972.

Q And can you tell us whether or not anyone else's signature
appears on that page, sir?

A Yes, Mr. Maxwell's signature.

Q Did you personally see Mr. Maxwell - -

MR. FAHRINGER: I object to that, if your Honor
please.

THE COURT: Mr. Maxwell, ladies and gentlemen,
is the United States Magistrate in the
Districts sitting in Buffalo here. It is
the Magistrate's function, generally

Ronald Hawley for Government, Direct.

speaking, to be an assistant to the judges in certain matters and he has the right under the rules to issue certain orders and also to take on certain hearings and matters under the direction and supervision of the Court generally. We do not have to get into identifying the Magistrate's signature or any of that, Mr. Endler, do we?

MR. ENDLER:

Well, your Honor, if I may approach the bench.

THE COURT:

I cannot see what the problem is here.

(Off the record discussion held at sidebar between Court and counsel.)

THE COURT:

The details of what transpired before the Magistrate are not essential for us to hear about here.

MR. ENDLER:

No, your Honor.

THE COURT:

But pursuant to application made to the Magistrate that he issued a certain order or a warrant, as we call them, and under that, you may proceed, Mr. Endler.

Ronald Hawley for Government, Direct.

BY MR. ENDLER:

Q Thank you, your Honor. Special Agent Hawley, I would like to show you now what has been pre-marked as Government Exhibit Number 1 for identification and ask if you can identify this document, sir?

A Yes. This is a search warrant issued by Mr. Maxwell for an individual by the name of Richard Giglia.

Q Can you tell us, sir, what, if any, date appears on this document?

A March the 5th, 1972.

Q I would also like to show you, sir, what has been pre-marked as Government Exhibit Number 2 for identification and ask if you can identify that document?

A This also is a search warrant and it is for the premises at 2743 Delaware Avenue which is the Kenmore News Shop.

Q Does that also bear a date, if any, sir?

A Yes. It is the same date, March the 5th, 1972.

Q I would also like to show you what has been pre-marked as Government Exhibit Number 3 for identification and ask if you can identify that document, sir?

A This is another search warrant and it is for the person of Richard Todaro and it is also dated March 5, 1972.

Q And I would like to show you another document pre-marked as Government Exhibit Number 4 for identification and ask you if you can identify that, please?

Ronald Hawley for Government, Direct.

A Yes. This is a search warrant for the premises at 52 Bannard Avenue, Town of Tonawanda and it is dated March 5, 1972.

Q Sir, if you would just take a second, I would ask you if you would please take a look at Page 2 of Government's Exhibits 1 through 4 that have been pre-marked, and ask you if you can recognize the signature of anyone who appears thereon?

MR. FAHRINGER: Object to this, if it please your Honor.

THE COURT: Again, I do not think, - that is your signature?

THE WITNESS: Yes, sir. That is my signature.

THE COURT: Again we do not have to go into the details of the affidavit.

MR. ENDLER: No. I am just asking - -

THE COURT: In fact, an application was made to the Magistrate.

MR. FAHRINGER: Is acknowledged, your Honor.

THE COURT: Surely.

BY MR. ENDLER:

Q Fine. Sir, after these documents, Government's Exhibits 1 through 4 were signed, could you tell us what, if anything, you did with them?

Ronald Hawley for Government, Direct.

A. Yes. We executed them.

Q. Did you have occasion to return to the offices of the Federal Bureau of Investigation in Buffalo?

A. Previous to executing them?

Q. Yes, sir.

A. Yes, I did.

Q. Now, of your own personal knowledge, can you tell us whether or not these four exhibits that I have, Government's Exhibits 1 through 4, were executed on what date, if any?

A. It would be on March the 6th, 1972.

Q. Excuse me. Did you personally, yourself, participate in the execution of all four?

A. No, I did not.

Q. Referring then to Government's Exhibit 1, you have identified a search warrant for Mr. Giglia, do you know who, if anyone, executed this search warrant, sir?

A. Yes. I executed that one at the Kenmore News Shop.

Q. Referring to what has been previously marked as Government Exhibit Number 2, a search warrant for the Kenmore News Shop, do you know who, if anyone, from the FBI executed this one?

A. Yes. I did.

Q. Referring to Government's Exhibit Number 3 or what has been marked for identification as Government Exhibit

Ronald Hawley for Government, Direct.

Number 3, search warrant for Mr. Richard Todaro, do you know who, if anyone, executed this one?

A Yes, George Fellows.

Q And referring to Government's Exhibit or what has been pre-marked for identification as Government's Exhibit Number 4, a search warrant for the premises at 52 Bannard Avenue, Town of Tonawanda, New York, do you know who, if anyone, executed this one, sir?

A That was also George Fellows.

Q And Mr. Fellows is also a special agent with the Federal Bureau of Investigation?

A Yes, he is.

Q Sir, can you tell us who, if anyone, was with you when you executed the search warrant for Mr. Giglia and the Kenmore News Shop?

MR. FAHRINGER: That is objected to as irrelevant, incompetent and immaterial.

THE COURT: Who was with him?

MR. FAHRINGER: Yes.

THE COURT: I suppose it may be, depending upon what occurred, but I do not think it makes any difference. I will overrule the objection.

THE WITNESS: Yes.

THE COURT: Although I do not think it is needed

Discussion.

as I understand, the theory here.

MR. ENDLER:

Well, your Honor, I think - -

THE COURT:

Let us do this, ladies and gentlemen; we will take a recess now and maybe I could talk to the lawyers for a few minutes about this problem.

At the recess break, do not discuss the case. Talk about something else. Spectators stay in your places, please, and we will have you back in about fifteen minutes and continue with this trial .

(Jury escorted from the courtroom.)

THE COURT:

Mr. Endler.

MR. ENDLER:

Yes, sir. The only reason I want - -

THE COURT:

He went and they obtained some material and then you told Mr. Fahringer and Mr. Cambria what you - -

MR. ENDLER:

What material, y/s.

THE COURT:

What material. We have had a hearing on the search warrant.

MR. ENDLER:

The only reason I want to illicit who, if anyone, was with Special Agent Hawley, was - -

Discussion.

THE COURT:

Mr. Todaro, I think you should remain during all these discussions. As a matter of fact, you may sit out there, if you desire. That is your choice, but do not complain if you cannot hear. You have the right to be present at all stages of the proceedings. On the other hand, you also have the right to absent yourself from any part of it. By sitting out there, you may not be able to hear some of what goes on up here but do not complain about it. I believe it is better if you sit here. I'm not going to direct you to sit up here. If you want to sit there, it is all right but if there is any interruption for need to confer at all, then I am going to have you sit up here but anytime there is any discussion with lawyers, I want you to be present, so stay in Court.

Mr. Endler.

MR. ENDLER:

Yes, sir.

THE COURT:

Maybe this is a small matter that we can get over quickly.

MR. ENDLER:

All the witness would say is that Special Agent Holmes was there and that he

Discussion.

was the custodian of the evidence they seized so that William Holmes when he gets on, - all he can say is that those other agents were with him when he executed the warrant.

MR. FAHRINGER:

Your Honor, may I just at this point, explain, and I will do this again, if you like, but I am going to object again, to all of this coming in, of course, if it relates to the Kenmore News and Giglia and search warrants for those people, and I would also, your Honor, if I may do it at this time - -

THE COURT:

The theory is that it is part of the - -

MR. FAHRINGER:

I know.

THE COURT:

The whole conspiracy which is part of the business which the Government will have to tie up.

MR. FAHRINGER:

I know the problems, your Honor, but let me just say for the record, until they establish the conspiracy, and I know the practical problems with this, but until they establish the conspiracy, I would like to urge upon the Court that

Discussion.

none of this be received in evidence.

This may be a fair - -

THE COURT:

We are not going to hand this to the jury until we get to a certain stage, but we have to make a beginning step.

MR. FAIRINGER:

Right.

THE COURT:

Mr. Endler.

MR. ENDLER:

Yes, sir.

THE COURT:

I can see your point that we should have Mr. Holmes identified so there is no question about control of evidence and we are getting past all of the affidavits but it seems to me that this identification of signatures and all that is certainly beside the point as far as the jury is concerned because they will be instructed that there was a warrant issued and that pursuant to the warrant, the agents did thus and so and, of course, it is my decision to determine whether or not the warrant was correctly issued and this evidence now can come into evidence so as to the details of how the warrant was obtained, it seems to me is just immaterial.

MR. ENDLER:

I didn't know that your Honor was

Discussion.

going to instruct them that they should not consider the validity of the search warrant.

THE COURT:

Of course it is not their business. You do not want them to have all that testimony about what information that the agent had.

MR. FAHRINGER:

Of course not. I thought I made it very clear, your Honor. That is my concern here. Judge, may I, while we are here, just for the record, if you will permit me, again raise the objection in terms of the search warrants and all this coming in on the original pre-trial motions which I know the jury has nothing to do with, so that I might just state it and what I will do is, I will formally object to the receipt into evidence of these search warrants. I would like it to be known that the grounds are that we have objected to all of this and on the Giglia situation, your Honor, we never were involved in any hearing to suppress that and I suspect we have a serious standing problem there but I would like to , out of

Discussion.

an abundance of caution, add that I don't know whether there were ever hearings on those search warrants and whether they were ever legally issued or not but certainly if that evidence is expected to be received against Mr. Todaro, I would like to urge that we have the right to challenge those warrants and complain about the issuance of them if the evidence is going to be received against us. Your Honor, Mr. Cambria explains to me that you have ruled on all the warrants and I must say I didn't understand that.

THE COURT:

I thought I did.

MR. CAMBRIA:

Well, at the time, your Honor, there was a question of standing. You indicated you wouldn't decide on standings, that you would review the sufficiency of every warrant including Giglia's since those were the only exhibits that the Government intended to introduce in evidence and you found it all proper according to our objections.

THE COURT:

The Government, of course, would still urge I take it, Mr. O'Keefe, that the

Discussion.

defendants did not have standing?

MR. ENDEL:

To this day he does not, we contend,
your Honor.

THE COURT:

Very well. We will take about a
ten minute break.

(Recess taken at 11:07 a.m.)

* * * * *

Ronald Hawley for Government, Direct.

PROCEEDINGS: After recess, 11:20 a.m.

APPEARANCES: As before noted.

(Defendant present)

(Jury present)

R O N A L D H A W L E Y, a witness called by and in behalf of the Government, having been previously duly sworn, resumed the witness stand and testified further as follows:

DIRECT EXAMINATION BY MR. ENDLER (RESUMED):

THE COURT: We are all assembled, Mr. Endler.

BY MR. ENDLER:

Q Thank you very much, your Honor. Mr. Hawley, are you familiar with an agent of the FBI named William Holmes?

A Yes, sir.

Q Can you tell us, sir, whether on March 6, 1972 when you went to execute what has been marked as Government's Exhibit 2 for identification, search warrant for the Kenmore News Shop, whether Mr. Holmes was present with you on that date?

A Yes, he was.

MR. ENDLER: I have no further questions, your Honor.

Ronald Hawley for Government, Cross.

CROSS EXAMINATION BY MR. FAHRINGER:

Q If it please your Honor. Mr. Hawley, you have testified for applying, - getting a search warrant which is a court order, right?

A Yes, sir.

Q And incidentally, is there a procedure that you know about and have been trained in for also getting an arrest warrant?

A Yes, there is a procedure, yes.

Q And an arrest warrant authorizes the arrest of a person, doesn't it?

A Yes, sir.

Q Now, when you have an arrest warrant, that is legal process from a court that authorizes you to enter premises, doesn't it?

A Yes, sir.

Q And place a person under arrest?

A Yes, sir.

Q Isn't it also true that when you have a search warrant, when you execute the search warrant, if you discover incriminating evidence, you have authority as a law enforcement officer, to place a person under arrest, don't you?

A You do, yes.

Q All right. For instance, if you have a search warrant

Ronald Hawley for Government, Cross.

for certain premises and you go in and pursuant to the search warrant you find incriminating evidence that satisfies you as a law enforcement officer that a crime has been committed, you can place a person under arrest?

A Yes, sir.

Q Now, in this instance, you told us about a search warrant that you got for certain premises and for Mr. Giglia and one for Bannard Avenue and Mr. Todaro, right?

A Yes, sir.

Q At that same time, on February 16th, - I am sorry, March 5th, excuse me, I ask you if you recall that you, - show you what has been marked Government Exhibit 4, - this is a copy of it, - did you apply for 51 search warrants?

A Yes, sir.

Q On that very same day?

A Yes, sir.

Q And were all of them or most of them executed?

A I believe there were 46 or 48, Mr. Fahringer, that were finally authorized. I think the 46 or 48 that Mr. Maxwell authorized, yes.

MR. FAHRINGER: I have no further questions.

THE COURT: Anything else, Mr. Endler?

MR. ENDLER: Yes, just one thing, your Honor. The

William L. Holmes for Government, Direct.

Government at this time would move what has been marked as Government's Exhibits 3 and 4 into evidence, your Honor.

THE COURT:

Why don't we do this, Mr. Endler, let us defer on all these rulings until it is essential and we hear a few more witnesses. All right, Mr. Hawley.

MR. ENDLER

Mr. William Holmes, please.

* * * * *

W I L L I A M L. H O L M E S (Federal Bureau of Investigation Headquarters, Washington D.C.), a witness called by and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. ENDLER:

Q Mr. Holmes, could you tell us how you are employed, please?

A Special Agent with the FBI.

Q And could you tell us how long you have been employed?

A Approximately eight years.

Q Now, directing your attention back to January, February and March of 1972, could you tell us where, if anywhere, you were assigned?

William L. Holmes for Government, Direct.

A I was assigned at Buffalo, New York.

Q The Buffalo field office?

A That's correct.

Q And, sir, directing your attention back to February 16, 1972, as part of your official duties as an agent with the Federal Bureau of Investigation, did you have occasion to be involved in a gambling investigation at that time?

A Yes, I was.

Q And can you tell us, sir, if you know, what the name, if any, of the case agent was?

A Ronald Lee Hawley.

Q Can you tell us, sir, during the course of that investigation, what, is anything, were your duties that you were assigned?

A I was in charge of monitoring the court authorized interception of telephone conversations on certain telephones.

Q Sir, I show you what has been marked as Government's Exhibit 6 and ask if you can identify that?

A Yes, I can.

Q And can you tell us, sir, if that is the court order which you received on or about February 16, 1972?

MR. FAHRINGER: Your Honor, I am going to object to the repeated reference to the court order

William L. Holmes for Government, Direct.

for the grounds that I have asserted to the Court before.

THE COURT:

Why do we have to go through this with each witness, Mr. Endler? We have a court order, you do not have to show him the court order. He acted pursuant to the order and he went someplace. You do not have to go through all this rigamarole. Let us get to the heart of this business.

MR. ENDLER:

All right.

THE COURT:

Refer to the order. You can refer to the court order and question the witness.

BY MR. ENDLER:

Q Pursuant to the court order which you received February 16th, can you tell us what, if anything, you did, sir?

A Yes. I recorded, - was instrumental in recording telephone conversations.

Q Sir, were you the agent responsible for implementing that court order?

A Yes, sir I was.

Q And can you tell us, sir, what, if any, locations or what, if any, telephone facilities you actually implemented

William L. Holmes for Government, Direct.

the court order on?

THE COURT:

So there is no question here, Mr. Fahringer, it appears to me, - maybe there is some material in there that you object to, but so the jury knows what is in the order, that we just simply read the order. I don't mean the application but the order to the jury. I think the order ought to be clearly spelled out what the direction to the agent was.

MR. FAHRINGER:

I wonder if I might take a look at it again, your Honor.

THE COURT:

All right. We can do that later, but he acted pursuant to the order and then you did something, go ahead Mr. Endler.

BY MR. ENDLER:

Q Can you tell us what, if anything, you did, sir?

A Yes. I recorded telephone conversations that came over, I believe, two telephones, numbers of which I am not familiar with at this moment.

Q And were there any other locations or facilities, telephone facilities, if any other, than the two you mentioned?

William L. Holmes for Government, Direct.

A Well, there was a location at Kenmore News Stand at Delaware and Kenmore, I believe.

Q And can you tell us, sir - -

THE COURT: So we have a clear record, show the agent the order. Do you need to look at some writing to refresh your recollection?

THE WITNESS: Yes, sir.

THE COURT: All right. You tell us exactly what phone numbers you did some work on and also what locations you worked on and what you did.

THE WITNESS: Telephone Number 716-681-2509 at Apartment 7 at 476 Terrace Boulevard, Depew, New York; Telephone Number 716-377-4347 at 387 Ontario Street, upper, Buffalo, New York.

THE COURT: What did you do in regard to those phones?

THE WITNESS: Recorded the conversations that came over the telephones, and then at the Kenmore News Shop at 2743 Delaware Avenue, Kenmore, New York there were oral conversations that were recorded there.

William L. Holmes for Government, Direct.

BY MR. ENDLER:

Q And, sir, can you tell us over what period of time, what duration, if any, you actually recorded conversations at these three locations?

A Excuse me, February 16th, I believe, until the 29th of 1972.

Q And as a result of this interception, sir, can you tell us what, if anything, you obtained?

A Yes, 43 reels of recorded conversations.

Q And I show you a box here containing what has been marked Government's Exhibits 16 through 58 and ask if you can identify those, sir?

A Yes, sir. These are the original recordings of the 43 reels of tape that I mentioned.

Q Made as a result of the implementation you just told us about?

A That is correct.

Q Now sir, following the actual making or recording of this individual reel, could you tell us what, if anything, you did with it?

A Well, right after each recording was made a duplicate recording was made from the original. The original was then sealed and I initialed the tape and the date it was sealed and these original tapes were filed in a locked cabinet in a locked room.

William L. Holmes for Government, Direct.

Q And can you tell us, sir, where, if anywhere, those tapes remained until today?

A As far as I know, they remained in the same cabinet I put them in since 1972.

Q All right. Now, directing your attention to March 6, 1972, did you have occasion as part of your official duties with the Federal Bureau of Investigation, to participate in the execution of some search warrants?

A Yes, I did.

Q And can you tell us where, if anywhere, you participated in the execution of these search warrants?

A At Kenmore News Stand and 122 Ramsdell, upper apartment.

Q Now, referring you, however, to the Kenmore News Stand, can you tell us what time, if any, you arrived there approximately?

A Approximately 10:00 a.m.

MR. FAHRINGER: Forgive me, your Honor. I would like to have just a standing objection to all of this testimony as not binding on my client.

THE COURT: Overruled.

BY MR. ENDLER:

Q I am sorry. Could you repeat the time?

A Approximately 10:00 a.m.

William L. Holmes for Government, Direct.

Q And could you tell us, sir, other than agents who might have accompanied you there, who, if anyone, was on the premises known as the Kenmore News Stand?

A Mr. Richard Giglia and Joseph Silvagnia.

Q Sir, did you have a search warrant for anyone on the premises known as the Kenmore News Stand when you went there on that date?

THE COURT: Excuse me. What is the date again, Mr. Holmes?

THE WITNESS: March 6, 1972. Personal?

BY MR. ENDLER:

Q Yes.

A Yes.

Q And who, if anyone was that, sir?

A Richard Giglia.

Q Now, sir did you have occasion on March 6th to execute these two search warrants?

A Yes, I did.

Q Sir, I would like to show you what has been marked as Government Exhibit Number 8 for identification and ask you if you can identify that for us, please?

A Yes, I can.

Q And, sir, does there appear on what has been marked as Government Exhibit 8, some initials or what appears to be

William L. Holmes for Government, Direct.

initials?

A Yes, there are initials and a date.

Q And can you tell us, sir, and I am referring to the initials, if you can identify them or recognize them?

A Yes. Special Agent Rex W. Ownby and my initials appear on this piece of paper.

Q And is there a date that appears on that, sir?

A 3-6-72.

Q And can you tell us, sir, where, if anywhere, you obtained what is contained in Government's Exhibit Number 8?

A This was located in the second drawer in a cabinet behind the counter of Kenmore News Stand.

Q I would also like to show you what has been marked for identification purposes as Government Exhibit Number 9 and ask if you can identify that, sir?

A Yes, I can.

Q And once again, does some initials or what appears to be initials appear on what has been marked as Government's Exhibit Number 9?

A Yes, they do.

Q And, sir, correct me if I am wrong, but in Government's Exhibit Number 9, there are some nine individual or separate pieces of paper, is that correct, sir?

A Yes.

William L. Holmes for Government, Direct.

Q And do your initials appear on each and every piece of paper, these nine pieces of paper?

A All except one.

Q And is there a date on there, sir?

A 3-6-1972.

Q And can you tell us where, if anywhere, you obtained what is in Government's Exhibit Number 9 for identification?

A These were taken from a shelf behind the counter at Kenmore News Stand.

Q I would also like to show you what has been pre-marked as Government's Exhibits Numbers 10, 11 and 12 for identification and ask if you can identify those, sir?

A These are three sports publications.

Q And, sir, can you tell us, referring to what has been marked as Government's Exhibit Number 10, what date, if any, appears on this publication?

A February 22, 1972.

Q And on Government's Exhibit, - what has been marked Government Exhibit 11, the date, if any?

A February 29, 1972, and on Government's Exhibit 12, March 7, 1972.

Q And can you tell us, sir, where, if anywhere, these three documents, Government's Exhibits 10 through 12 were obtained?

William L. Holmes for Government, Direct.

- A. They were located at Kenmore News Stand at different places throughout the store.
- Q. And, sir, what is represented in Government's Exhibits Numbers 8, 9, 10, 11 and 12, were all of these obtained by you, on or about March 6, 1972 at the Kenmore News Stand?
- A. They were obtained in my presence or by me.
- Q. I would also like to show you, Mr. Holmes, what has been marked as Government's Exhibit Number 7 and ask if you can identify that, sir?
- A. Yes, I can.
- Q. And could you tell us once again, if any initials appear on what is represented by Government's Exhibit Number 7?
- A. Yes. Special Agent Hutchinson, myself and Rex W. Ownby.
- Q. And can you tell us where, if anywhere, you obtained what is in Government's Exhibit Number 7?
- A. These were obtained from the person of Richard Giglia.
- Q. And can you tell us the date they were obtained from the person of Richard Giglia?
- A. On 3-6-1972.
- Q. Sir, I would like to show you at this time, what has been marked as Government's Exhibit Number 59 for identification and ask if you can identify that?
- A. Yes. This is a composite tape of different conversations that were taken off of the 48 reels, - excuse me, the

William L. Holmes for Government, Direct.

43 reels of tape that I mentioned previously.

Q And when you mentioned the 43 reels, are you referring to Government's Exhibit 16 through 58 which were previously shown to you in the carton to your left?

A Yes.

Q And can you tell us, sir, did you personally, or did someone else make or record what is contained in Government's Exhibit Number 59?

A Yes. At my direction, Special Agent Robert L. Toney, made this composite tape from the original tapes.

Q Sir, can you tell us what, if any instructions were given to Special Agent Toney?

A He was told to record all calls where the line was being given to this gambling organization.

MR. FAHRINGER: I will object to that, if it please your Honor, calling for a conclusion.

THE COURT: It is an instruction. I will overrule it.

BY MR. ENDLER:

Q Sir, did you, in fact, give the 43 reels of tape, or whatever, to Special Agent Toney for this purposes or these purposes?

A The duplicate of those reels were used for this purpose.

Q And of your own personal knowledge, can you tell us

William L. Holmes for Government, Direct.

whether or not Special Agent Toney carried out your instructions and re-recorded some conversations?

A Yes, he did.

Q And did there come a time when Special Agent Toney gave you back what is contained in Government's Exhibit Number 59?

A Yes.

Q And following his returning it to you, did you have occasion to check or listen to that to insure that what you had told him to put on there, was in fact on there?

MR. FAHRINGER: I will object to that, your Honor.

THE COURT: Comparison between the, - I think this is not what he told him to put on.

MR. FAHRINGER: Yes.

THE COURT: But he compared the 42 or 44 tapes with 59.

MR. FAHRINGER: Just so I am sure of the instruction.

THE COURT: Did you listen to both tapes?

THE WITNESS: I listened to this recording.

THE COURT: All right.

THE WITNESS: And verified the calls I requested are on there.

THE COURT: And you had listened to the other calls before?

William L. Holmes for Government, Direct.

THE WITNESS: Yes, sir.

THE COURT: All right. Overruled.

BY MR. ENDLER:

Q I would also like to show you, sir, what has been marked as Government Exhibit Number 60 and ask if you can identify that?

A Yes, sir.

Q And can you tell us what, if anything, it is, sir?

A This is a transcript of the calls that were on Government's Exhibit, - that reel I just had.

Q You are referring to Government's Exhibit Number 59?

A That's correct.

Q Now sir, prior to coming into court today, had you had occasion to both listen to Government's Exhibit Number 59 and also to read what is in Government's Exhibit Number 60?

A Yes, I did.

Q And have you also had occasion, sir, to compare these two documents, Government's Exhibit Number 59 and Government's Exhibit Number 60 with the originals or these duplicates you referred to, to insure that what is, - what appears in 59 and 60 Exhibits, appears also in Government's Exhibits 16 through 58?

A Yes sir, I did.

William L. Holmes for Government, Direct.

Q Now, sir, do you know, or can you tell us, if you know, sir, how many conversations, if any, separate conversations, appear on Government's Exhibit Number 59 that I am holding here?

A Approximately 40.

Q And, sir, have you had occasion to listen to all 40 of these conversations?

A Yes sir, I did.

Q Can you tell us, sir, whether you know whether there are more than one voice or the voice of one person reflected in these 40 conversations?

A Yes, there are.

MR. FAHRINGER: Your Honor, I will object to this.

THE COURT: I will overrule.

BY MR. ENDLER:

Q You may answer.

A Yes.

THE COURT: He said "yes".

BY MR. ENDLER:

Q Now, sir, this transcript that appears in Government's Exhibit Number 60, sir, did you and agents working with you, actually make it or transcribe it? In other words, the form that appears before you today, was this made

William L. Holmes for Government, Direct.

under your direction and supervision?

A Yes, it was.

Q And am I not wrong, that in this transcript, sir, there are certain words and statements attributed to various people who are identified in that transcript?

A Yes, sir.

Q And can you tell us, sir, and I will try and refer you to specific instances, exactly how and what procedure and method you went through to attribute certain words or phrases to various people? Now, sir, I believe in the Government's Exhibit Number 60, you have attributed certain conversations to a person referred to as Coz, C-o-z, is that correct?

A That's correct.

Q And you have also attributed certain statements or conversations to a person I believe named Art, A-r-t?

A That's correct.

Q And a person named Paul?

A Yes, sir.

MR. FAHRINGER: I object to this. It seems to me at least, we are getting ahead of ourselves here. We are talking about the tapes.

THE COURT: I think so, Mr. Endler. I find no basis. I will sustain the objection.

MR. ENDLER: Your Honor, may I - -

Robert L. Toney for Government, Direct.

THE COURT: If you want to use it just as A, B, C, D, E, F, G and if you want to use, - these are just fictitious names for want of separation, but not that these people refer to any living individuals at the present time, go ahead.

MR. ENDLER: Yes, your Honor.

THE COURT: I agree with Mr. Fahringer. I just think you are getting ahead of yourself.

MR. ENDLER: Well, your Honor, if I may be heard - -

THE COURT: Why don't you ask him a question.

MR. ENDLER: I have no further questions of this witness.

MR. FAHRINGER: I have no questions.

THE COURT: No questions. Mr. Holmes, it may be that we might have to have you back in a little while.

THE WITNESS: Okay.

THE COURT: Next witness, please.

MR. ENDLER: Mr. Robert Toney, please.

* * * * *

ROBERT L. TONEY (22 Kings Trail, Williamsville, New York), a witness called by and in behalf of the Government,

Robert L. Toney for Government, Direct.

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. ENDLER:

- Q Mr. Toney, could you tell us how you are employed, please?
- A I am a special agent with the FBI.
- Q And could you tell us how long you have been so employed?
- A Since 1968.
- Q And could you tell us where you are currently assigned?
- A I am currently assigned to the Buffalo Division.
- Q And referring back to 1971 and '72, could you tell us where you were assigned at that time?
- A Buffalo, New York.
- Q Sir, I would like to show you what has been marked as Government's Exhibits Numbers 16 through 58 and ask if prior to coming into court today you had, - well, ask if you can identify these for us?
- A Yes, I can.
- Q And can you tell us, sir, as part of your official duties with the, - as an agent with the Federal Bureau of Investigation, could you tell us how you came into contact with these, - what has been marked as Government's Exhibits Numbers 16 through 58?
- A I was told by my supervisor to take custody of these tapes and review them and to make certain transcripts or

Robert L. Toney for Government, Direct.

excerpts, rather, from all of these tapes.

Q I now show you what has been marked as Government's Exhibit Number 59 and ask if you can identify that, sir?

A Yes, I can.

Q And could you tell us what, if anything, it is?

A This is a composite tape recording made from these tapes right here.

Q And can you tell us, sir, who, if anyone, actually made or recorded what appears in Government's Exhibit Number 59?

A I did.

Q And do your initials appear so on that?

A Yes, sir.

Q And is there a date, if any, that appears on that?

A Yes sir, there is.

Q And could you tell us what, if any, the date is?

A August 16th and August 17th, 1973.

Q And, sir, when you, - following your making or recording of this, - what appears in Government Exhibit Number 59, - did you have occasion to listen to it again in comparison with what appears in Government's Exhibit Number 16 through 58?

A Yes, I did.

Q And can you tell us, sir, based on your comparison, if what is reflected in Government Exhibit 59 are true and

Robert L. Toney for Government, Direct.

accurate portions of what appears in Government's Exhibits 16 through 58?

A Yes, it is a true and accurate composite recording.

Q Sir, in front of you, you have what has been marked as Government Exhibit Number 60. I will ask if you can identify that, sir?

A Yes, I can.

Q And could you tell us, sir, what, if anything, it is?

A This is a written transcription of what is on the composite tape that I made.

Q Referring, - when you say "composite", sir, you are referring to Government's Exhibit Number 59?

A Yes, I am.

Q Now, sir, when you, back in, - I believe you said August of 1973, actually made this, what appears in Government Exhibit 59, this re-recording or composite, did you have the benefit of Government's Exhibit Number 60 with you?

A Yes.

Q Sir, were you able or did you, if at all, as you were playing or listening to what is in Government's Exhibit Number 59, have the occasion to have Government's Exhibit 60 in front of you so that you could read it?

A I had the complete transcriptions of what is in all these tapes here and that, - this Exhibit here was made

Robert L. Toney for Government, Cross.

subsequent to my recording that composite recording.

MR. ENDLER: I have no further questions of this witness, your Honor.

CROSS EXAMINATION BY MR. FAHRINGER:

Q Just a few questions. Mr. Toney, I take it what you did was, you took those 43 reels that are in that box up there, is that right?

A That's correct.

Q And out of all of those 43 reels, you picked out certain conversations that are re-recorded over onto this one tape here?

A Yes, sir.

MR. FAHRINGER: Thank you.

THE COURT: Nothing further. Next witness, please.

MR. ENDLER: Your Honor, may we approach the bench at this time?

THE COURT: Mr. Knisley.

(Sidebar conference held between the Court and counsel as follows:

MR. ENDLER: Your Honor, at this time the Government had anticipated one of the detectives, Dragonette or Darico to make a voice identification, so this might be an

Discussion.

appropriate time for Mr. Fahringer and I to read any stipulation.

MR. FAHRINGER: Sure. I have it all prepared.

MR. ENDLER: I wonder if we could take five minutes.

THE COURT: Do you have something written out?

MR. FAHRINGER: That is what I read to you at the recess. Would you like me to read it into the record, your Honor?

THE COURT: Why not just show it to Mr. Endler.

MR. FAHRINGER: I don't know whether he can read all of it.

THE COURT: I am sure he can.

MR. ENDLER: Do you mind if I just put the exhibit numbers on?

MR. FAHRINGER: Not at all, 60 or 59, is it not?

MR. ENDLER: You don't have 59, do you?

MR. FAHRINGER: Yes, right here.

MR. ENDLER: As appearing on the composite tape.

MR. FAHRINGER: Sure, put that in if you like.

MR. ENDLER: Your Honor, as long as we are here, so as not to delay the trial, Mr. Boreanaz, who represents Mr. Giglia and both Castellani's, I requested Mr. Boreanaz to have them here at 9:30. They have not

Discussion.

appeared but Mr. Boreanaz is here and after we read the stipulation I was going to request the composite be played to the jury by Mr. Holmes. That is why I was identifying the voices of the transcript but maybe we should ask Mr. Boreanaz if his clients will be here.

MR. FAHRINGER: Judge, may I ask this; I don't have any idea of what the problems are but I wonder if it could be done such a way we don't read it in the papers tomorrow.

THE COURT: There are no press people here.

MR. FAHRINGER: I didn't know that.

THE COURT: We will look at that.

MR. ENDLER: If it is all right with your Honor at this time I would like to request permission to read to the jury.

MR. FAHRINGER: Yes, sure.

THE COURT: And then we will take up the other problems. I will have the jury step out.

MR. ENDLER: All right, fine.

(Sidebar conference concluded.)

THE COURT: Ladies and gentlemen, Mr. Endler is now going to read a stipulation to you.

Stipulation.

As you know, a stipulation shall be considered by you in the same way as if the witnesses were in here and testified to these facts under oath in the courtroom.

MR. ENDLER:

Thank you, your Honor. It is hereby stipulated by and between Richard Endler on behalf of the United States Government and Herald P. Fahringer on behalf of the defendant Richard J. Todaro that the voice indicated on the transcript marked as Government's Exhibit Number 60 and as appearing on the composite tape marked as Government's Exhibit Number 59 covering ten telephone calls, is the voice of the defendant Richard J. Todaro.

THE COURT:

Mr. Fahringer, there is no question, I would say this, that this stipulation, of course, is made on behalf of your client.

MR. FAHRINGER:

Oh, absolutely.

THE COURT:

Is that right?

MR. FAHRINGER:

Absolutely.

THE COURT:

And with full authority to make it.

MR. FAHRINGER:

Absolutely.

THE COURT:

Ladies and gentlemen, there is a brief meeting I should have with the

Discussion.

attorneys at this time. We'll only take a minute or so. Perhaps you could step into the corridor. Mr. McCloud, check out there and if there are any witnesses there ask them to step down to the other end of the corridor. You may walk out, ladies and gentlemen, and we will have you back in a minute.

(Jury escorted from the courtroom.)

THE COURT: Mr. Boreanaz, do you want to step up, please.

MR. HAROLD J. BOREANAZ: Yes, your Honor.

THE COURT: As I understand it, Mr. Endler - -

MR. ENDLER: Yes, your Honor.

THE COURT: There is some problem.

MR. ENDLER: It is my understanding Mr. Boreanaz represents Steve Castellani and Anthony Castellani who are two prospective Government witnesses.

THE COURT: I thought he represented Mr. Giglia.

MR. ENDLER: Well, Mr. NeMoyer does, but Mr. NeMoyer called me Friday and assured me, - he was out of town, - Mr. NeMoyer, but he would

Discussion.

be here.

THE COURT: All right. You are here for all three?

MR. BOREANAZ: That is correct, your Honor.

MR. ENDLER: Are they here?

MR. BOREANAZ: Well, no, your Honor. I was advised that we would probably need them this afternoon. I have been here to be sure that I could get them here in a half hour.

THE COURT: All right. Do you think you will be ready? What do you have next, the tapes?

MR. BOREANAZ: We have the composite tape, your Honor, and I think it is approximately an hour and ten minutes.

THE COURT: We will start and I think it might be a good idea, could we take a break in the middle?

MR. ENDLER: At some appropriate place I could request Mr. Plumpton just to stop it.

THE COURT: To stop and then pick up again. I think it is hard work listening to tapes.

MR. ENDLER: Sure.

THE COURT: I suppose then you would like to have these witnesses this afternoon?

Discussion.

MR. ENDLER:

If possible, whenever your Honor is going to resume the afternoon session.

THE COURT:

2:00 o'clock.

MR. ENDLER:

2:00 o'clock, all right?

MR. BOREANAZ:

We will be here. Your Honor, I would like to advise the Court on behalf of all three of these witnesses that I would desire an instruction from the Court that they are compelled to respond by virtue of being subpoenaed and that the immunity granted them at the time they appeared before the grand jury and gave testimony is in force and effect here. I would like that statement on the record by the Court to the witnesses. It makes no difference to me, of course, how the Court does that but I would not want my clients to take the 5th because that is the position they would take if they were called.

MR. ENDLER:

As a matter of fact, I have taken the liberty to obtain from Alice Manning certified copies of the immunity orders which I was going to hand out to your Honor.

Discussion.

THE COURT:

We will do that out of the jury's presence.

MR. BOREANAZ:

There is one other factor, your Honor, insofar as it relates to a witness Stephan Castellani. He is under treatment of a doctor and I have so advised Mr. Endler and provided Mr. Endler with a report, a copy of the report of March 9, 1976, wherein Doctor Zimdahl who is his physician, outlines his condition and says that in his opinion the man should not testify.

THE COURT:

Mr. Castellani, is he up and about?

MR. BOREANAZ:

Yes, he is, your Honor. He will be here.

THE COURT:

Does he carry out his ordinary daily affairs?

MR. BOREANAZ:

I would not care to answer that for him, your Honor. I would prefer to have the Court interrogate him on that.

THE COURT:

You gave this report to Mr. Endler, when?

MR. BOREANAZ:

Friday.

MR. ENDLER:

Monday.

MR. BOREANAZ:

It was either Friday or Monday. It

Discussion.

would be Friday last or Monday of this week, your Honor.

THE COURT: All right. He will be here and then we will take it up.

MR. BOREANAZ: Yes, he will, your Honor.

THE COURT: Mr. Endler - -

MR. ENDLER: Yes, your Honor.

THE COURT: Let us have the jury come back and are we ready to start the tape?

MR. ENDLER: If I could - -

THE COURT: I think we will probably listen to maybe half an hour, forty minutes now and then take it up again at two so that probably it would appear to me that with Mr. Castellani, - how long do you think his testimony will take?

MR. ENDLER: Well, on direct, your Honor, I can only say that if he answers me - -

THE COURT: How long is the direct?

MR. ENDLER: About half an hour, approximately, give or take five minutes.

THE COURT: This is the first time that I knew there was any problem of this nature. What information do you have about Mr. Castellani?

MR. ENDLER: Unfortunately, your Honor, it is

Discussion.

unfavorable in that the defendant, - I
don't mean the defendant, - Mr. Castellani - -

THE COURT:

Have the other Castellani and Giglia
come this afternoon and then at the end
of the day we will take up the other
problem as far as the other Castellani is
concerned.

MR. ENDLER:

You will have Richard and Tony here
too?

MR. BOREANAZ:

That's right.

MR. FAHRINGER:

Your Honor, may I bring up another
matter with the Court? It has nothing to
do with this.

THE COURT:

Tell Mr. Plumptre to come in, Mr.
O'Keefe, will you do that?

MR. FAHRINGER:

Your Honor, in keeping what you
suggested the other day about bringing
these things out now, there are other
conversations, of course, on the tape
that don't involve Mr. Todaro. I assume
that you know that, that come sometimes
before and after his conversation. There
is a certain conversation that is segregated
out that we have stipulated Mr. Todaro - -

THE COURT:

Mr. Fahringer, these tapes have been

Discussion.

here for a long time. As I understand it, that the Government has been ready to have you read them for a long time and listen to them for a long time. Unless there is something very urgent, we are going to listen to it as it is.

MR. FAHRINGER: Your Honor, you did not let me finish.

THE COURT: And not do a lot of editing now.

MR. FAHRINGER: Your Honor, I am not complaining about that.

THE COURT: All right. Tell me what the problem is, will you, please.

MR. FAHRINGER: My complaint is, your Honor, that I'm going to object to those calls as not being binding on Mr. Todaro.

THE COURT: All right, certainly.

MR. FAHRINGER: And I thought I owed it to you to tell you that now.

THE COURT: Certainly.

MR. ENDLER: Your Honor, before the jury comes in, - I will talk to Mr. Plumptre in a second, but I don't know if there is any argument unless we request the Court to hand copies of Government Exhibit 60 to

Discussion.

your Honor, Mr. Knisley and the members of the jury.

THE COURT: All right.

MR. FAHRINGER: I have no objection. Of course, your Honor, I can't stipulate to the identify of the other voices.

MR. ENDLER: No, just Mr. Todaro.

MR. FAHRINGER: Just Mr. Todaro.

THE COURT: Mr. Todaro. Are we going to have somebody tell us who the other people are?

MR. ENDLER: Well, that was what I was going to elicit from Mr. Holmes, your Honor, hopefully so we don't have to stop the tape.

THE COURT: How does Mr. Holmes know that the other men are who they say they are?

MR. ENDLER: Well, as to what I refer to as Art or Coz, these people answer the phone, "This is Art" and in the transcript they are just designated as "Art" and "Coz".

THE COURT: Yes.

MR. ENDLER: And the only four people who are identified by full name are Mr. Todaro, Steve Castellani, Richard Giglia and Anthony Castellani. What Mr. Holmes would

Discussion.

have said is that he attributed these conversations or statements to those people because when he was recording the conversations, either they identified themselves as, "This is Steve Castellani", physical surveillances also put Mr. Castellani in the place at the time the call was made and that, you know, he interviewed them when they were arrested and things like that, your Honor, and that is how he made the voice identification.

THE COURT:

All right. Why don't we do this, why don't we hear the tape and then we will know the problem and we can have Mr. Holmes come back if necessary and make certain identifications.

MR. FAHRINGER:

Judge, I don't want to complicate the trial, believe me I don't, and I assumed he was going to have somebody identify their voices.

THE COURT:

Mr. Holmes is.

MR. FAHRINGER:

All right, your Honor, but if they listen to the whole tape and then he says, "I never saw Mr. Giglia in the place, I

Discussion.

never talked to Mr. Giglia", of course, they have heard the whole thing.

THE COURT:

Have Mr. Holmes come back. Bring the jury in and have Holmes come back. You see, Mr. Fahringer, the reason I become a little upset and angry - -

MR. FAHRINGER:

Do it that way then.

THE COURT:

Because it is a simple thing and it happens again and again in your cases and these are things, - this is a three year old case and these are problems which I believe in a case like this should be taken up ahead of time.

MR. FAHRINGER:

Judge, I can't identify their voices, I can't stipulate to it.

THE COURT:

I know that, but if you are going to make these objections that will delay the trial, if there is some difficulty make them ahead of time. That is why I want you to look at these exhibits.

MR. FAHRINGER:

Judge, are you suggesting to me I go to him and say, "How are you going to identify Castellani's voice"?

THE COURT:

No, but you listened to the tapes?

MR. FAHRINGER:

Yes, I did.

Discus on.

THE COURT: All right.

MR. FAHRINGER: To make sure it was Mr. Todaro's voice.

THE COURT: Now we have the jury in the box.

MR. FAHRINGER: Yes.

THE COURT: You know I have the problem here of having trials fill ahead.

MR. FAHRINGER: But, Judge - -

THE COURT: I am not asking you to give anything up on behalf of your client. I want you to be able to do it in the best possible fashion.

MR. FAHRINGER: But, Judge, it is their responsibility to prove the voices of the other people, not mine. I have no responsibility.

THE COURT: We have Mr. Holmes here but I cannot see, the jury, neither the jury nor I have heard any of these voices, heard any of the people and it just seems to me that I do not know what we are going to get from this.

MR. FAHRINGER: Judge, I tell you truthfully, I think it is unfair in a sense that I am supposed to try and figure out how we are going to avoid problems with him identifying other

Discussion.

people's voices. I don't think that is a fair accusation of me. Obviously, your Honor, if they can't prove certain things, I am going to object to it in this trial. I don't think I bear the onus - -

THE COURT:

What I am saying to you is, should we listen to the transcript first or should we have somebody identify voices that we have not heard first?

MR. FAHRINGER:

Your Honor, I thought the procedure would be he would produce somebody here to identify the other three voices. I anticipated that, your Honor. I never, for a moment thought he would put the tape in without identifying the other voices.

THE COURT:

I understand Mr. Holmes can identify the other voices.

MR. ENDLER:

And how he attributed to people like Art.

THE COURT:

Very well, have the jury come in.

(Jury returns to the courtroom.)

* * * * *

William L. Holmes, recalled for Government, Redirect.

W I L L I A M L. H O L M E S, a witness called by and in behalf of the Government, having been previously duly sworn, resumed the witness stand and testified further as follows:

REDIRECT EXAMINATION BY MR. ENDLER:

THE COURT: It will be helpful to have Mr. Plumpton stay. You can stay there, Mr. Plumpton.

MR. PLUMPTON: Thank you, sir.

THE COURT: All right, Mr. Endler.

BY MR. ENDLER:

Q Thank you, sir. Exhibit Number 60, I would like to hand a copy to you now. This is, I think or I believe what you identified as a transcript of what appears in Government Exhibit Number 59, is that correct?

A That is correct.

Q Now, contained in the body of what is marked as Government Exhibit Number 60, there are how many conversations, did you say, sir?

A Forty.

Q And with particularity there are more than one person or one person's name or voice in this transcript, is that not correct?

A That is correct.

William L. Holmes, recalled for Government, Redirect.

Q And I would like to refer you now, with specificity that in the transcript, Government's Exhibit Number 60, there has been attributed certain conversations and statements to a person named Paul, simply Paul, isn't that correct?

A Yes, sir.

THE COURT: Excuse me, Paul?

BY MR. ENDLER:

Q P-a-u-l, first name Paul.

A Yes.

Q And also to an Art, A-r-t?

A Yes.

Q And also to a "J" period, "S" period, is that correct?

A Yes.

Q And also to a "No. 20".

A That's correct.

Q And also to a "1-2-3", is that correct?

A That is correct.

THE COURT: Mr. Endler - -

MR. ENDLER: Yes, your Honor.

THE COURT: Is "1-2-3" - -

MR. ENDLER: One hyphen 2 hyphen 3.

THE COURT: Three different persons?

MR. ENDLER: No.

William L. Holmes, recalled for Government, Redirect.

THE COURT: A person identified as "1-2-3"?
THE WITNESS: Yes, sir. It is a numerical designation for his identification.
THE COURT: "You are 1-2-3" or whoever it is?
THE WITNESS: Yes, sir.

BY MR. ENDLER:

Q And also statements there attributed to a person named "Coz", C-o-z?
A That's correct.
Q And also a quote, "Mr. Stogey", S-t-o-g-e-y?
A Yes.
Q And also to a "J" period "P" period, is that correct?
A That's correct.
Q Now, sir, when Government's Exhibit Number 60 was made or typed up, what have you, and these statements were attributed to one of these names or designations I have just mentioned, could you tell us how you and the agents determined that certain, - well, first of all, how did you determine the name "Art" or "Paul", for example?
A Well, in most cases these names were identified in the actual conversation.
Q Well, referring specifically to Government's Exhibit Number 60, did the conversations which you attributed to "Paul", to the person who identified himself as "Paul",

William L. Holmes, recalled for Government, Redirect.

how did you attribute those words or statements to "Paul", and maybe I can refer you to Page 3 of Government's Exhibit Number 60, sir, where you have done that.

A. Right. This is where Paul was identified by the statement "Paul, your figure is 420".

Q. Sir, and at the bottom of Page 3, going to Page 4, you have attributed certain statements to this person I refer to as "Art", A-r-t, and once again could you tell us how, if any way, did you attribute certain statements to "Art"?

A. In that conversation he was identified as "Art".

Q. Sir, referring to Page 6 of Government's Exhibit Number 60, the bottom half, you have attributed once again statements to a person designated as "J.S.". Could you tell us, sir, how once again you attributed certain statements or sentences or words, what have you, to "J.S."?

A. The same way, the caller identified himself as "J.S.".

Q. And referring to Page 9, sir, of Government's Exhibit Number 60, once again you have attributed certain statements and words to a person or a voice designated as "Number 20", two zero. Could you tell us how you did that, sir?

A. In the same method. It was identified in the context of the call.

William L. Holmes, recalled for Government, Redirect.

Q Well, in this call I am referring to on Page 9, did anybody participating in that conversation refer to someone else by the name "Number 20"?

A Yes. He identified, -the called identified himself as "Number 20".

Q And referring to Page 10, sir, of the same exhibit, Government's Exhibit Number 60, starting approximately one third of the way down, once again you have attributed certain statements, words, conversations to this person we have designated as "1-2-3"?

A In that instance the caller also identified himself as "1-2-3".

Q Now, sir, at other times in the same Government's Exhibit Number 60, I believe there are also other conversations with this name "Art" or the name "Paul", "J.S." or "Number 20" appear again. Could you tell us in those other conversations, for instance on Page 17, sir, if you can refer to Page 17 of Government Exhibit Number 60, referring to Call Number 3 at the bottom of the page?

A Yes.

Q In that conversation I believe you have attributed once again certain words or statements to this person "Art", A-r-t?

A That's correct.

William L. Holmes, recalled for Government, Redirect.

Q Could you tell us, sir, how, if at all, these statements or words or what have you, were attributed to this person designated as "Art"?

A A comparison of the voice that was on the previous call where "Art" was identified, was made, and the same voice was attributed to this individual or caller on this call.

Q Now, sir, referring you to the bottom of Page 21 of Government's Exhibit 60 and a call that begins at the top of Page 22, in this conversation you have attributed certain words, phrases, conversations, to a person identified as "Coz", C-o-z, is that correct?

A That's correct.

Q And once again, could you tell us how, if at all, these phrases, sentences, what have you, were attributed to this "Coz"?

A The caller identified himself as "Coz".

Q Referring you, sir, to Page 28 of this Exhibit Number 60?

A Yes.

Q The conversation beginning at the very bottom and starting on Page 29, you have attributed certain conversations once again, statements, sentences, to a person designated, or a voice designated as "Number 20", two zero. Once again, could you tell us how you did that?

William L. Holmes, recalled for Government, Redirect.

A. The caller identified himself as "Number 20".

Q. And referring to Page 40, sir, the bottom of Page 40 of Government's Exhibit 60 - -

A. Yes.

Q. And the conversation, Call Number 7 which begins actually on Page 41, you have attributed once again certain phrases, words and sentences to a voice you have put in here as "Mr. Stogey", S-t-o-g-e-y, is that correct, sir?

A. That's correct.

Q. Could you tell us once again how you attributed words and phrases to this "Mr. Stogey"?

A. The caller identified himself as "Mr. Stogey".

Q. Sir, Page 44 of Government's Exhibit Number 60, at the bottom of the page?

A. Yes.

Q. I am referring to Call Number 2?

A. Yes.

Q. You have attributed certain words and phrases and sentences once again to a person "Paul", the voice "Paul". Could you tell us how you did that?

A. The same method. The caller identified himself as "Paul".

Q. Okay, and referring to Page 47, sir, Call Number 5?

A. Yes.

Q. You have attributed once again certain conversations to

William L. Holmes, recalled for Government, Redirect.

Q a "Number 20". Could you tell us how you did that, sir?

A The caller again identified himself as "Number 20".

Q And, sir, on the next page, Page 48, Call Number 7, you attributed certain conversations or words to a Mr., or just a "J.S.", excuse me, "J" period "S" period. Could you tell u how you did that, sir?

A Same method that the caller identified himself as "J.S."

Q And, sir, the bottom of Page 53 of Government's Exhibit Number 60, referring to Call Number 5?

A Yes.

Q You have attributed once again conversations to "Number 20". Could you tell us how you did that?

A The same method. The caller identified himself as "Number 20".

Q And referring to Page 60, sir, Call Number 3?

A Yes.

Q You have attributed certain conversations to a Mr. "Coz", C-o-z. Could you tell us how you did that?

A The same method. The caller identified himself as "Coz".

Q And on Page 62, sir, Call Number 4?

A Yes.

Q Once again you attributed conversations to a "Number 20", is that correct?

A That's correct.

William L. Holmes, recalled for Government, Redirect.

- Q And once again, could you tell us how you did it?
- A The caller identified himself as "Number 20".
- Q And on the very same page, sir, Call Number 7, you attributed certain conversations to a Mr. "Stogey"?
- A Yes, I did.
- Q And once again, could you tell us how you did that?
- A The same way. The caller identified himself as "Stogey".
- Q On Page 67, sir, of the same exhibit, Call Number 5?
- A Yes.
- Q Once again you attributed certain conversations to a person named "Art", A-r-t. Could you tell us how you did that, sir?
- A Yes. He was identified by the individual answering the phone as "Art".
- Q And on Page 69, sir, Call Number 6?
- A Yes.
- Q Once again you attributed conversations to a person or a voice designated as "Number 20"?
- A That is correct.
- Q Could you tell us how you did that, sir?
- A The caller identified himself as "Number 20".
- Q And on Page 71, sir, Call Number 8?
- A Yes.
- Q You attributed certain conversations to a person or voice designated as "1-2-3", is that correct?

William L. Holmes, recalled for Government, Redirect.

A That is correct, sir.

Q And once again could you tell us how you did that?

A The caller identified himself as "1-2-3".

Q And on Page 75, sir, Call Number 14?

A Yes.

Q You attributed once again, conversations to a "Number 20", or a voice designated as "Number 20"?

A That's correct.

Q And once again, could you tell us how you did that, sir?

A The caller identified himself as "Number 20".

Q And on Page 77, sir, Call Number 16?

A Yes.

Q Once again, you attributed conversations to a person or a voice designated as "1-2-3". Could you tell us how you did that?

A The caller again identified himself as "1-2-3".

Q And on Page 81, sir, of this same exhibit, Call Number 18?

A Yes.

Q Once again you attributed conversations to a person or a voice designated as "Stogey", S-t-o-g-e-y, is that correct, sir?

A That is correct.

Q And could you tell us once again, how you did that?

A The caller identified himself as "Stogey".

Q And on Page 84, sir?

William L. Holmes, recalled for Government, Redirect.

A. Yes.

Q. Call Number 11, excuse me. You have attributed certain conversations to a person or voice designated by the initials "J.P.", "J" period, "P" period, is that correct, sir?

A. Yes, sir.

Q. And once again, could you tell us how you did that?

A. It was once again identified by the individual calling out as "J.P.".

Q. And on Page 86, sir, Call Number 13?

A. Yes.

Q. Once again, you attributed words, phrases, what have you, to a "Stogey", S-t-o-g-e-y, is that correct?

A. That is correct, and he identified himself as "Mr. Stogey".

Q. And, sir, on Page 89, Call Number 14?

A. Yes.

Q. You attributed once again certain conversations to a person or a voice designated as "J.S.", the initials "J.S."?

A. That is correct.

And once again, could you tell us how you did that?

A. The caller identified himself as "J.S.".

Q. Now, also, sir, I believe in each of these conversations have just run through, that we have referred to only

William L. Holmes, recalled for Government, Redirect.

one party to the conversation, is that correct?

A That is correct.

Q And can you tell us of your own personal knowledge, - well, are there more than one party in each conversation?

A Yes, there are.

Q In other words, two people speaking. If I may, sir, refer to a conversation that appears on Page 1 or the cover page, and it is Reel A-1, and you have attributed conversations or at least part of the conversations to Mr. Anthony Castellani as one of the persons in this call and I believe, - excuse me, - in this call, Call Number 20 and in Call Number 1 on February 21, 1972 and Call Number 3 on February 22nd, Call Number 2 on February 23rd, Call Number 1 on February 25th. Sir, of the 40 conversations and 24 of these conversations you have attributed certain words, phrases, once again, conversations to this person "Anthony Castellani"?

A That's correct.

Q That appear in the transcript as "Anthony Castellani", and in these 24 conversations, can you tell us once again how you attributed certain words, phrases, statements, to Mr. Anthony Castellani?

A It is a process where the identification of the individual is not made within the context of the call other agents who might be familiar with the voice either make

William L. Holmes, recalled for Government, Redirect.

identifications or else his identity was revealed during interviews.

MR. FAHRINGER: That is objected to, please, your Honor, what came from other agents.

THE COURT: Strike what came from other agents or what came from interviews.

BY MR. ENDLER:

Q Well, sir, can you tell us how the designation - -

THE COURT: Mr. Holmes, are you familiar with Mr. Castellani's voice?

THE WITNESS: I was, sir. It is so long ago - -

THE COURT: I know that, but at the time you made the judgment, were you familiar with it then?

THE WITNESS: Yes, I was.

THE COURT: Was he referred to sometimes, - did he refer to himself?

THE WITNESS: On several occasions if I recall correctly, the name "Tony" was used and I believe on another conversation "Tony Castellani" was used.

THE COURT: I see, and you were familiar with his voice at that time and then you made the judgment based upon that familiarity,

William L. Holmes, recalled for Government, Redirect.

is that right?

THE WITNESS: Yes, sir.

THE COURT: All right.

BY MR. ENDLER:

Q Also, sir, in Government's Exhibits Number 60, there are 11, I believe, conversations in which, - 11 out of the 40, in which you have attributed once again certain words, phrases, conversations to a person or voice you have identified as Richard Giglia. Can you tell us, sir, and with respect to Mr. Richard Giglia, how you attributed certain words and phrases to Mr. Giglia?

A By the same method of the context of the calls where he identified himself in the context of the conversation and then also at a later time when I served the search warrant.

Q You have talked to Mr. Giglia in person?

A Yes.

Q And with respect to Government's Exhibit Number 60, I believe there are 4 conversations in which a person by the name of Steve Castellani, - in other words, you have attributed certain words and phrases to a person or a voice you have designated as "Steve Castellani". Can you tell us, sir, once again the procedure you used in attributing certain words, phrases, sentences, what have

William L. Holmes, recalled for Government, Redirect.

you, to this person "Steve Castellani"?

A. That was by the same method, the context of conversations or where he identified himself.

Q. Sir, when you put these names here, or whatever, and you attributed certain words and phrases to them, you have the benefit of what appears in Government's Exhibit Number 16 through 58?

A. Yes, I did.

Q. And were there, sir, conversations appearing in those exhibits wherein Mr. Steve Castellani or the person you attributed words to, Mr. Anthony Castellani and Mr. Richard Giglia were either referred to by themselves or by other individuals by those names?

A. Yes, to the best of my knowledge, that is correct.

MR. ENDLER: Mr. Fahringer - -

THE COURT: Mr. Fahringer, you can ask questions now or you can defer cross examination of Mr. Holmes, or are you going to ask some now and ask some after?

MR. FAHRINGER: I will defer cross examination.

THE COURT: All right, Mr. Holmes.

THE WITNESS: Thank you.

THE COURT: I guess you are going to have Mr. Plumptre do something now. I think perhaps we better have the witness sworn.

* * * * *

Vincent Plumpton, Jr. for Government, Direct.

V I N C E N T P L U M P T O N, JR. (111 W. Huron Street, Buffalo, New York), a witness called by and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. ENDLER:

Q Mr. Plumpton, how are you employed, please?

A I am employed as a Special Agent for the FBI.

Q And, pursuant to my instructions, did you bring over some tape recording, - a tape recording machine and some wires that we see laying around the courtroom today?

A Yes, sir.

MR. ENDLER: And with the Court's permission, I I would request Mr. Plumpton be excused from the witness stand to be seated at counsel table so that Government's Exhibit Number 59 may be played to the members of the jury.

THE COURT: Are there any questions you want to put before we start with Mr. Plumpton, Mr. Fahringer?

MR. FAHRINGER: No. I would just like to register an objection. I can do that now or if you would like, your Honor, later on.

THE COURT: Could you do it later?

Discussion.

MR. FAHRINGER:

Sure.

THE COURT:

I thought it might be a good idea, not that we are going to listen to the whole tape now, but maybe begin mechanically to see if we can get it adjusted to the sound. Mr. Plumptre, do you want to step down. I take it that the jurors - -

THE WITNESS:

Each have one.

MR. ENDLER:

Your Honor, if I may ask if Mr. Plumptre may be allowed to demonstrate to the jurors and members of the - -

THE WITNESS:

The jurors all have one. In the front row they are on the chairs.

THE COURT:

Excuse me. The beginning part, have we gone through that?

THE WITNESS:

Yes, sir. I just brought what Mr. Endler designated and if you just put them on underneath your chair.

MR. ENDLER:

Your Honor, before we actually start, I request permission of the Court now to distribute copies of Government Exhibit Number 60 to the Court and members of the jury panel.

THE COURT:

All right. Ladies and gentlemen, if you can just take the earphones off for a

Discussion.

minute, we will start. I think in listening, you must remember it is up to you to determine the facts in this case so as far as identifications are concerned it will be ultimately up to you to determine whether or not a person designated as "Joe Smith" is in fact Joe Smith. As far as whether or not the transcript accurately reflects what you hear on the tape, again that is your judgment to make. Merely because somebody else, an agent, Mr. Toney or anyone else has listened and he has made a certain judgment that the person said "Hello" or "1-2-3" or anything else here, you may consider it as a guide, but whether it is accurate is up to you and if you think that there are any mistakes made here or there are any words left out or if there are some words that are included that do not appear in the transcript, that is your judgment and you make that judgment so that means you not only have to follow along with the reading of the transcript but you have to listen as well so that if you have any

Composite Reel of Tape played, Exhibit 59.

difficulty in hearing, if there is something you find maybe the earphones are too low or too high, just raise your hand and we will try to get the difficulty straightened out. All right. Mr. Fahringer, Mr. Todaro, if he wants to listen, he can listen.

MR. FAHRINGER:

I appreciate that, your Honor, and we will waive that.

THE COURT:

All right. Very well, Mr. Plumptre.

(Government Exhibit Number 59 for identification was then played as indicated in Government Exhibit Number 60 for identification, commencing at Page 1 with the words "The following four calls are re-recorded from Reel A-1" through and including Page 13 of Government Exhibit Number 60 for identification, ending with the words "The following four calls are re-recorded from Reel A-7". In the instance of each call as reflected in Government Exhibit Number 60 for identification the heading of each call, for example in Call Number 20 on Page 1 of Government's

Discussion.

Exhibit Number 60, "February 16, 1972 -
TELEPHONE NUMBER 877-4347, REEL NUMBER
A-1" was not heard in the playing of
Government's Exhibit Number 59 for
identification.)

THE COURT:

Excuse me, Mr. Plumpton.

THE WITNESS:

Your Honor.

THE COURT:

I think now would probably be a
good time to take a break.

Ladies and gentlemen, we will take
a recess now. Just leave your coats
and machines right where they are and
put the transcript right on the bench in
front of you. That should be left here,
and as I said before, certainly do not
talk about any problems that may have
arisen or have been brought up because of
the transcript or anything else you have
heard here this morning. We will, of
course, hear more of what this is all
about as we go on. Certainly in order to
make up your mind in this case you must
consider all of the evidence on this. You
cannot make up your mind from a recording

Discussion.

and I want to emphasize again that as far as any identification you hear made by the agent who put this composite tape together, - that is, the excerpts from all of the other tapes that were selected out and put in here, any identification that he has made of any voices you will, of course, recall the testimony of Mr. Holmes and the stipulation which is in evidence but as far as whether any of this is accurate, that is for your final determination and should only be made after you listen to all the evidence in the case.

We will now be in recess until 2:00 and we will then pick up where we left off.

THE WITNESS:

Yes, sir.

(Jury escorted from the courtroom.)

MR. FAHRINGER:

Your Honor, for the record, I would like to object to the playing of the tape to the jury on the grounds it is irrelevant, incompetent and immaterial, and the grounds

Discussion.

I urged in advance of the trial on the motion for suppression, and in particular I would like to be very specific on my objection to these other calls that follow behind or ahead of Mr. Todaro on the ground there is no evidence he knew anything about these calls. There is no proof on the record he knew they were giving the lines to anyone else and therefore it is immaterial and certainly there hasn't been a foundation for those calls to introduce them into the case.

THE COURT:

I will overrule the objection and certainly, Mr. Fahringer, at the end of this when we get the other testimony here you are certainly free to renew any motions which you feel necessary to bring your argument to the attention of the Court.

MR. FAHRINGER:

Thank you.

THE COURT:

We will be in recess.

(Recess taken at 12:50 p.m.)

* * * * *

Composite Reel of Tape played, Exhibit 59.

PROCEEDINGS: After recess, 2:05 p.m.

APPEARANCES: As before noted.

(Defendant present.

(Jury Present.)

THE COURT: We are all here. Can we continue listening?

MR. DODLER: Yes, your Honor. I believe prior to the break we were on Page 13 of the transcript, about halfway down.

THE COURT: All right. Mr. Plumpton, we will start right where we left off.

MR. PLUMPTON: I will be starting with the line "The following four calls", sir.

THE COURT: Fine, all right, when everyone is ready. I guess we are all set.

(The playing of Government Exhibit Number 59 for identification was resumed commencing with "The following four calls are re-recorded from Reel A-7", as indicated on Page 13 of Government's Exhibit Number 60 for identification, through and including "Alright", as indicated on Page 75 of Government's Exhibit 60 for

Composite Reel of Tape played, Exhibit 59.

identification, except for the heading
on each call, for example, "February 19,
1972, TELEPHONE NUMBER 877-4347,
REEL NUMBER A-7".)

THE COURT:

Mr. Plumptre, why don't we take a
short break now. Ladies and gentlemen,
about five or ten minutes, just to give
your ears a rest and we will come back
in, let us say, ten minutes and
continue, and again, please your
transcript in front of you and do not
talk about what you have heard so far.
You may go out with the Marshal and we
will return in about ten minutes.

(Recess taken at 3:05 p.m.)

* * * * *

PROCEEDINGS:

After recess, 3:20 p.m.

APPEARANCES:

As before noted.

(Defendant present.)

(Jury present.)

Composite Reel of Tape played, Exhibit 59.

THE COURT:

All right, Mr. Plumpton, when everybody has their apparatus on again you can begin.

MR. PLUMPTON:

Yes, your Honor. I will be starting on Page 75 about a third of the way down with the words "Call Number 14".

(Playing of Government Exhibit Number 59 for identification resumed as indicated on Government Exhibit Number 60 for identification, Page 75, with the words "Call Number 14 was recorded February 26, 1972, at 1:03 p.m. between Anthony Castellani and "Number 20", through Page 90 of Government Exhibit Number 60 for identification, ending with the words "Thank you", except for the heading on each call, for example, February 26, 1972, TELEPHONE NUMBER 877-4347, REEL NUMBER A-33".)

THE COURT:

Mr. Endler.

MR. ENDLER:

Yes, your Honor.

THE COURT:

Your next witness. Are there any

William L. Holmes, recalled for Government, Cross.

questions to put to Mr. Plumpton?

MR. FAHRINGER: None that I have.

THE COURT: Fine.

MR. ENDLER: Excuse me, your Honor. Mr.

Fahringer wanted to finish cross examination of Mr. Holmes.

THE COURT: Mr. Holmes.

MR. ENDLER: Mr. William Holmes, please.

THE COURT: Can you leave that there for the present, Mr. Plumpton. We will pick it up later.

W I L L I A M L. H O L M E S, a witness called by and in behalf of the Government, having been previously duly sworn, resumed the witness stand and testified further as follows:

CROSS EXAMINATION BY MR. FAHRINGER:

Q Mr. Holmes, I just want to review the procedure with you. As I recall, you testified that you were in charge of the making of the composite tape?

A It was made under my direction, that's right.

Q That's what I meant to say. I'm not suggesting you did it individually yourself.

A Right.

Q And Mr. Toney helped you with that, didn't he?

William L. Holmes, recalled for Government, Cross.

A That's right.

Q That's what I meant to say. I'm not suggesting you did it individually yourself.

A Right.

Q And Mr. Toney helped you with that, didn't he?

A That's correct.

Q All right. Now, I take it that what you did is you selected certain calls as you have told us out of all the forty-three reels that were then recorded onto this tape as we have heard, right?

A That's correct.

Q Now, do you know how many calls are included in the forty-three reels?

A Several hundred. I wouldn't know the exact amount.

Q Well, let me ask you this, if I, - based, - you know, we have had all the transcripts, the entire transcripts, not just these. If I indicated to you there were some 563, would you have any reason to dispute that?

A No, sir, I wouldn't, not at this time.

Q All right, and then out of those 563 calls, 40 are represented on this composite?

A That's correct.

Q And out of the 40 calls, ten out of the 40 calls involve Mr. Todaro?

A That's correct.

William L. Holmes, recalled for Government, Cross.

- Q All right. Now, showing you a transcript that is dated February 17, 1972, I guess the best way to identify it is Reel Number A-3, I take it all the transcripts were made under your supervision, right?
- A That's correct.
- Q And call Number 10, Page 2, there is an indication of "Tony", and on the previous page, is he identified as Tony Castellani?
- A That is correct.
- Q All right, and does it say next to "Tony", - now, this is a transcript of an intercepted call on the 17th?
- A Yes, sir.
- Q And does it say "Nothing, you don't bet anyway. I give them to you. I work all day on the line", and then it says "You tell me to stick it up my ass", does it say that?
- A Yes, it does.
- Q All right. Now, also on the 17th, referring your attention to that same volume that I have identified as February 17, 1972, Reel Number A-3, there is a call that is designated from Reel Number A-3, Call Number 5, incoming at 6:58 p.m. and it says, "A male in, yeah, Number 20", and then, "Male out", which you have as Tony Castellani, right?
- A That's correct.

William L. Holmes, recalled for Government, Cross.

Q And he says, "Yeah, Number 20", and "Male in" says, "Have you any lines", and Tony says, "On Basketball", and Tony says, "Yeah", and then he says, "Yeah, Seton all three and a half, Memphis State seven", does that appear there?

A That's correct.

Q And was that done under your supervision?

A That's correct.

Q Now, referring your attention to February 24, 1972 - -

MR. ENDLER: Excuse me, your Honor. Could we have all these transcripts marked as Court Exhibits.

MR. FAHRINGER: Sure.

THE COURT: So the jury and I can understand it, I would understand that separate transcripts were made for each tape.

MR. FAHRINGER: Yes, Judge.

THE COURT: And now what you are doing is you are referring to certain portions of other tapes.

MR. FAHRINGER: That's right, Judge.

THE COURT: Have these been marked before, Mr. Endler?

MR. ENDLER: No, they have not, your Honor.

THE COURT: All right. Why not mark the ones

William L. Holmes, recalled for Government, Cross.

you are going to use.

MR. FAHRINGER: I would be happy to, your Honor.
The one I just used previously was identified as the one of February 17, 1972, and it is one volume. Could we have that marked?

THE COURT: Mark them as Court Exhibits.

(Court Exhibits Numbered 17 and 18, respectively, marked for identification.)

BY MR. FAHRINGER:

Q If it please your Honor; showing you, Mr. Holmes, - is it Holmes?

A That's correct.

Q Mr. Holmes, Exhibit 18, I wonder if I could, - this is Court Exhibit 18, - invite your attention to the date of February 24, Reel Number A-30, Call Number 10, incoming at 7:02. Now, I would ask you if you will, please, just to read that page and the next page to yourself, please. Have you done that, Mr. Holmes?

A Yes, I have.

Q Have you read the entire conversation between the two parties?

A Yes, I have.

William L. Holmes, recalled for Government, Cross.

Q Now, you have identified the one party as Tony Castellani, right.

A That's correct.

Q And you identified the other one as Steve Castellani?

A That's correct.

Q Do you know from your investigation that Steve Castellani is Tony Castellani's father?

A Yes.

Q All right. Now, without going into the content, does this conversation appear to be a conversation from Mr. Steve Castellani who is in Florida talking to Mr. Tony Castellani who is here in Buffalo.

MR. ENDLER: Your Honor, I object to what it appears to be. I want to know what it is.

MR. FAHRINGER: Well - -

THE COURT: I will overrule that.

BY MR. FAHRINGER:

Q From your reading of the conversation and having worked on these tapes and transcripts, does that conversation consist of a call from Steve Castellani to Tony Castellani from Florida?

A I am not familiar with the destination or the origination of the call, but that is a call between Tony Castellani and Steve Castellani.

William L. Holmes for Government, Redirect.

- Q Does Steve Castellani say he is in Florida?
- A Yes, he does.
- Q Does he say he is in the hospital in Florida?
- A Yes, he does.
- Q And that is on February 24, 1972?
- A That's correct.

MR. FAHRINGER: Thank you. I have no further questions.

REDIRECT EXAMINATION BY MR. ENDLER:

- Q Sir, I would like to show you what has been marked as Government Exhibit Number 65 and ask you if you would take a look at that for a second, please.
- A Yes.
- Q Sir, now directing your attention back to 1972, and I believe earlier you testified that you were the agent responsible for this electronic, - the implementing of this electronic device. Can you tell us, sir, for exactly what duration of time or what time period you and other special agents of the Federal Bureau of Investigation monitored calls on Telephone Number 877-4347, how many days?
- A At 6:19 p.m. on February 16, 1972 and continued during the hours of 2:36 p.m. on February 27, 1972.
- Q Is that eleven days, sir?

William L. Holmes for Government, Redirect.

A That's correct.

Q And, can you tell us, sir, with respect to Telephone Number 681-2509 for what period of days, if any, you and the other special agents of the Federal Bureau of Investigation conducted this electronic monitoring on that telephone?

A From 12:35 p.m. on February 16, 1972 through 2:55 p.m. on February 29, 1972.

Q Is that thirteen days?

A Thirteen days.

MR. ENDLER: That telephone, sir. I have no further questions.

MR. FAHRINGER: I have no further questions.

THE COURT: Nothing else? Thank you, Mr. Holmes.

MR. ENDLER: Your Honor, the Government would call Mr. Richard Giglia. Your Honor, may we approach the bench for a second?

(Off the record sidebar conference held between Court and counsel.)

THE COURT: Ladies and gentlemen, will you step into the corridor. Step into the corridor for a minute, please, and we

Discussion.

will have you right back.

(Jury escorted from the courtroom.)

THE COURT:

Mr. Boreanaz, could you step up,
please. As I understand it, Mr.
Giglia is not here.

MR. BOREANAZ:

That is correct, your Honor.

THE COURT:

Is there anything that you could
say to us that might - -

MR. BOREANAZ:

It is my belief that he is en
route, your Honor. At this point, not
having been in direct communication
with him, I really do not have a
sensible reason for his not having been
here. Mr. Anthony Castellani is here.
Mr. Steve Castellani, I called about
fifteen minutes ago and suggested that
he come down even though he was not
going to be here this afternoon with
the thought in mind if Giglia didn't
get here, there would be at least two
witnesses.

THE COURT:

Mr. Anthony Castellani is here.

MR. ENDLER:

Your Honor, if I may make a quick

Discussion.

suggestion, we have one more FBI witness, Mr. McGuire who is in the courtroom and I believe his direct will require about fifteen minutes or so. I also believe, based on this morning's proceedings, after the jury left, that Mr. Boreanaz is going to request something on the record, the fact that these three witnesses have immunity. I have the orders, as I stated. I expect Mr. Anthony Castellani's testimony could take an hour so I wonder if we could proceed with Mr. McGuire and then have any proceeding Mr. Boreanaz wishes on behalf of his clients and if Mr. Giglia and the other Castellani shows up, it will be about 4:30 and if your Honor wants me to start with Mr. Castellani at that time or proceed tomorrow morning at 9:30 or whatever the Court's pleasure.

THE COURT:

I understood Mr. Giglia was going to be here at 2:00 and you gave him the direction and he just is not here yet.

MR. BOREANAZ:

That is correct, your Honor, but

Discussion.

I understand at this point of time, although not directly from him, that he does have the message.

THE COURT:

He has a prior direction so he has an affirmative obligation to be here.

MR. BOREANAZ:

I am hopeful he will be here, your Honor.

THE COURT:

Should we proceed then with the other witnesses?

MR. ENDLER:

I could put Mr. McGuire on now, your Honor. I think he is out in the corridor.

THE COURT:

All right. Let us do that.

MR. ENDLER:

Thank you.

(Jury returns to the courtroom.)

MR. ENDLER:

Mr. Leonard D. McGuire, please.

* * * * *

Leonard McGuire for Government, Direct.

L E O N A R D M c G U I R E (111 West Huron Street,
Buffalo, New York), a witness called by and in behalf of the
Government, having been first duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION BY MR. ENDLER:

Q Mr. McGuire, could you tell us how you are employed,
 please?

A I am employed as a special agent of the Federal Bureau
 of Investigation.

Q And could you tell us how long you have been so
 employed?

A Approximately twenty-five years.

Q And could you tell us where you are currently assigned?

A I am currently assigned in the Buffalo Office.

Q And directing your attention back to February 28 of
 1972, were you so assigned to the Buffalo Field Office
 at that time, sir.

A Yes, I was.

Q And once again, directing your attention to February
 28, 1972, did you have occasion, sir, on that date,
 to conduct as part of your official duties with the
 Federal Bureau of Investigation, a physical surveillance?

A Yes, I did.

Q And can you tell us, sir, what, if anything, you were

Leonard McGuire for Government, Direct.

surveilling on that day?

A On that particular day, I was conducting a surveillance on the Kenmore News Shop which is located on Delaware Avenue in Kenmore, New York.

Q And, sir, on that date, February 28, can you tell us at approximately what time you began your surveillance?

A Sir, it was approximately 7:00 o'clock in the morning.

Q And can you tell us until what time, - well, at what time you discontinued your surveillance?

A About 3:00 p.m. the same day.

Q Now - -

MR. FAHRINGER: Excuse me. What date was that again?

BY MR. ENDLER:

Q February 28th, and, sir, on February, - well, directing your attention back to February of 1972, were you familiar with a person by the name of Richard Giglia?

A Yes, I was.

Q And on the 28th of February while on this physical surveillance, did you have occasion to see Mr. Richard Giglia?

A Yes, I did.

Q And can you tell us, sir, to the best of your recollec-

Leonard McGuire for Government, Direct.

tion, at what times, - well, at what time, if any,
did you first see Mr. Giglia on the 28th of February?

A I recall first seeing Mr. Giglia at approximately
ten minutes after 9:00 that morning.

Q And could you tell us what, if anything, Mr. Giglia
was doing?

A At the time I saw him, he was entering the Kenmore
News Shop.

Q And on the 28th, did you have occasion to see Mr.
Giglia again?

A Yes, I did.

Q And can you tell us at approximately what time, -
what time you saw him?

A I recall his departure from the Kenmore News Shop
at approximately 11:25 that morning when I saw him
go in a bar right next door to the Kenmore News
Shop.

Q And, sir, with respect to Mr. Giglia, did you observe
him again on that February 28th, 1972?

A Yes, I did.

Q And once again, could you tell us at what time, if
any?

A I observed him reentering the Kenmore News Shop at
approximately 12:10 on the same day.

Q And did you have occasion to see Mr. Giglia again that

Leonard McGuire for Government, Direct.
day.

A Yes. I saw him later the same afternoon, approximately 2:45 when I saw him come out and leave the area of the Kenmore News Shop.

Q Now, sir, from where you were conducting your physical surveillance, could you see the Kenmore News Shop, the front of it?

A Yes, I could.

Q And could you briefly describe to us, sir, what the front of the building or what this Kenmore News Shop looks like?

A Well, it is one of four business establishments located on the ground floor just, oh, north of the intersection of Kenmore and Delaware Avenues on the east side of the street and the Kenmore News Shop, I believe, is the third of our businesses to the north.

Q Sir, does the front of this shop have windows?

A Yes, it does.

Q And could you tell us the size or shape of the windows, if any?

A Well, the door of the news shop is in the middle with two windows of equal size on either side.

Q And, sir, could you tell us, - I mean, were these small windows, large windows; could you give us, in

Leonard McGuire for Government, Direct.

your words, your explanation of how big these windows were?

A I would estimate the windows were probably about eight feet wide on either side of the door and the door would probably be approximately two and a half feet.

Q Do you have any, - you say "eight feet wide". Do you have any estimate as to how high the windows were?

A I would say approximately ten feet high.

Q And from where you were located, sir, could you see in through the windows?

A Yes, I could.

Q And you said you saw Mr. Giglia enter and leave, but did you see him while he was inside the actual structure of the Kenmore News Shop?

A I am sure that I did.

Q Now, back in February of 1972, were you familiar with a person by the name of Joseph Silvagnia?

A Yes, I was.

Q And on the 28th of February, did you have occasion to observe Mr. Silvagnia?

A Yes, I did.

Q And could you tell us at what time, if any, you first observed him on that date, the 28th of February?

A I observed Mr. Silvagnia at approximately 8:25 a.m. on that day.

Leonard McGuire for Government, Direct.

Q And could you tell us what, if anything, he was doing?

A He was at the Kenmore News Shop at that time.

Q And can you tell us when, with respect to Mr. Silvagnia you next observed him?

A I recalled observing his departure from the Kenmore News Shop around 9:15 that date, a.m.

Q And did you have occasion to see Mr. Silvagnia again on that date?

A Yes, I did. I saw him return to the News Shop a short time after, approximately 9:35.

Q And after this, when you saw him at 9:35, did you have occasion to see him again on this date?

A Yes. I saw him at 12:48 when I saw him leave the Kenmore News Shop.

Q And did you have occasion to see him again that day, sir?

A No, I did not, not after 12:48.

Q Now, once again, from where you were located on that day, were you able to see Mr. Silvagnia while he was inside the premises known as the Kenmore News Stand?

A I'm sure that I did.

Q Did you have occasion, on February 28th, while you were conducting this surveillance, to see Mr. Giglia, Mr. Richard Giglia and Mr. Joseph Silvagnia in the Kenmore News Stand together, at the same time, that is?

Leonard McGuire for Government, cross.

A Yes. I am sure that they were both in the Kenmore News Shop at the same time.

MR. ENDLER: No further questions.

THE COURT: Mr. Fahringer.

CROSS EXAMINATION BY MR. FAHRINGER:

Q Your Honor; of course, Agent McGuire, I take it you saw a lot of other people go in the Kenmore News Shop on that day?

A Yes, I did.

Q I take it that it is a business that sells newspapers, sundry items, cigars, things of that sort?

A That's right.

Q So in the course of your surveillance, I take it there are a lot of people who walked in, stayed in there for a while and came out?

A That is correct.

Q All right, and would you see people go in, for instance, and come out with a newspaper under their arm?

A That's right.

Q And would some of those people be in the shop at the same time Mr. Silvagnia was in the shop or Mr. Giglia was in the shop?

A Yes, that's right.

MR. FAHRINGER: I guess that is all. Thank you.

Anthony Castellani for Government, Direct.

MR. ENDLER: Noting further. Thank you.

THE COURT: Thank you.

MR. ENDLER: Mr. Anthony Castellani.

THE COURT: Ladies and gentlemen, again I ask you to step into the corridor for a minute and we will have you back. Mr. Castellani, you can step in the middle here, just to get out of the way of the jury.

(Jury escorted from the courtroom.)

(Harold J. Boreanaz, Esq., appearing for the witness Anthony Castellani.)

THE COURT: Mr. Castellani, would you come over here and be sworn, please.

* * * * *

ANTHONY CASTELLANI (305 North Drive, Buffalo, New York), a witness called by and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Discussion.

THE COURT: You can be comfortable up there,
Mr. Castellani. Mr. Endler - -

MR. ENDLER: Your Honor.

THE COURT: Do you have the order, a copy of
the order?

MR. ENDLER: Yes, your Honor, I have marked it
as Government's Exhibit Number 14. I
would like to hand it up to you if I
might. It is a certified copy I ob-
tained from Alice Manning of the order
of this Court granting Mr. Castellani
immunity in connection with this proceed-
ing and I believe it is January 30, 1972
that your Honor signed it, and the
Government's application, of course,
this order that you signed providing that
he is under immunity for all proceedings
ancillary thereto covers any testimony
he may give today or tomorrow or however
long these proceedings may continue.

THE COURT: The order provides use immunity
to testify. On this, Mr. Boreanaz,
any comment or suggestions?

MR. BOREANAZ: Yes, your Honor. I am familiar
with that order. I was in court when

Discussion.

your Honor signed that order. I appear here today on behalf of the witness, as attorney for the witness. I seek the Court's instruction so as there to be no question with respect to my understanding that his immunity does pertain to these proceedings. If your Honor so advises then it will be unnecessary for him to exercise his Fifth Amendment privileges prior to proceeding.

THE COURT:

Mr. Castellani, it appears to the Court that we are now in the same information that you gave before the grand jury and I believe that this order encompasses the present testimony and I, therefore, direct you to testify in this proceeding and if you do testify, then the Government may not directly or indirectly use the testimony provided here to prosecute you, to bring a charge against you. You have what is known as use and derivative use immunity. Naturally, you must testify truthfully. This does not save you from any charge because of false testimony.

Discussion.

MR. BOREANAZ:

Would your Honor please also advise the witness that because of that, he has no right to refuse to respond.

THE COURT:

Yes.

MR. BOREANAZ:

And if he does refuse to respond, he will be guilty of contempt of Court.

THE COURT:

Right. You must respond. If you fail to respond under the present order directing you to testify, then the Government may proceed against you for contempt of Court. I think it ought to be, - to find out your intention now. With this order given to you and with the immunity given to you, do I understand correctly that when the jury returns you do intend to testify here, that you do not intend to assert any rights pursuant to the Fifth Amendment or any other amendment?

THE WITNESS:

Yes, I will testify.

THE COURT:

You are going to testify?

THE WITNESS:

Yes.

THE COURT:

Because if there are going to be any problems about your testifying, it seems to me it is most important that

Anthony Castellani for Government, Direct.

thresned out now and not when the jury gets back in the box.

THE WITNESS: Yes, your Honor.

THE COURT: Anything else, Mr. Endler, Mr. Boreanaz?

MR. ENDLER: Nothing else, your Honor.

MR. BOREANAZ: It is my advice to my client he is under compulsion to testify, your Honor, and it is my belief he will follow that advice.

THE COURT: Thank you. Will you have the jury return, please, Mr. McCloud.

(Jury returns to the courtroom.)

THE COURT: The witness has been sworn. Mr. Endler, will you have the witness identify himself, please and continue.

BY MR. ENDLER:

Q Would you please give us your full name?

A Anthony Castellani.

Q And could you give us your address, please?

A 305 North Drive.

Q And in what city or town is that located?

Anthony Castellani for Government, Direct.

A Buffalo.

Q Could you speak into the microphone so that all the people in the courtroom - -

THE COURT: Mr. Endler, we have a new microphone. I think everybody can hear Mr. Castellani fine.

BY MR. ENDLER:

Q Sir, can you tell us how long you have lived at 305 North Drive, I believe?

A For about three or four years.

Q And could you tell us, sir, are you employed?

A I am self-employed.

Q And could you tell us what, if anything, you do for an occupation or a living?

A I sell newspapers and candy at a newsstand.

Q And could you tell us where, if any, where this newsstand is located?

A It is at 778 Tonawanda Street, Buffalo.

Q And does this establishment have a name, sir?

A Yes, Riverside Newsstand.

THE COURT: It does mean, however, Mr. Castellani, that when you testify, you speak slowly enough so that Mr. Knisley can, and the jury can hear and understand.

Anthony Castellani for Government, Direct.

THE WITNESS: I am a little nervous. I have never done this before.

THE COURT: Just take your time.

BY MR. ENDLER:

Q Now, sir, are you the owner of the Riverside Newsstand?

A Yes.

Q And is it in your name alone?

A Yes.

Q And could you tell us how long you have owned the Riverside Newsstand?

A About three years.

Q Well, sir, directing your attention back to 1972, did you own it in January of 1972?

A Just half I owned then.

Q Could you tell us who, if anyone, owned the other half?

A My cousin, Sammy, owned the other half.

Q What is Sam's last name?

A Giglia.

Q And when did you, - well, did you buy Mr. Sam Giglia out or buy his interest out?

A Well, he had other interests and going into another business so he approached me and he says, "Would you like to buy the business instead of giving it to a stranger", so I says, "Well, I don't feel like going to

Anthony Castellani for Government, Direct.

work for nobody, so I will try it myself and see how it goes".

Q But referring and directing your attention back to January of 1972, you and this Mr. Sam Giglia were partners in the Riverside Newsstand, is that correct?

A Yes.

Q And was it an equal partnership?

A An equal partnership, yes.

Q 50/50?

A Yes.

Q Now, sir, are you familiar with a person by the name of Steve Castellani?

A Yes, he is my father.

Q And, sir, can you tell us if you know, what, if anything, does Mr. Steve Castellani do for a living?

A Well, he owns Kenmore Newsstand.

Q And can you tell us where that is located?

A That's in Kenmore. The address is, - I forgot the address.

Q And could you tell us, sir, if you know, how long your father has owned the Kenmore Newsstand?

A Up until this date?

Q Well, start from today, starting back, how many days, years, what have you.

A Oh, he has been there about seven years, maybe.

Anthony Castellani for Government, Direct.

Well, referring back to January and February of 1972, did he own it at that time, sir?

Yes, to the best of my knowledge, yes.

Now, are you also familiar with a person by the name of Richard Giglia?

Yes.

And could you tell us how long, if at all, you have known Mr. Richard Giglia?

All my life.

Does Mr. Giglia bear any relationship to you at all?

Richard Giglia?

Yes.

Yes. He is my cousin.

And is Mr. Richard Giglia in any way related to your partner back in 1972, Mr. Sam Giglia?

Yes, they are brothers, yes.

Now, are you or were you familiar with a person by the name of John Zak, Z-a-k?

Was I familiar with him?

Referring back to January and February, the early part of 1972.

Yes, I had known him.

And can you tell us how long you had known Mr. Zak?

A couple of years only. I seen him come in my father's store to help my father out.

Anthony Castellani for Government, Direct.

Q Now, are you familiar with a person named Mr. Sapienza or Sarge Sapienza?

A Yes, Sarge, I know him as.

Q And can you tell us how long, if at all, you have known Mr. Sarge Sapienza?

A About three years, two years, right around there.

THE COURT: Is this from 1972 or from now?

THE WITNESS: Well, from '72 now is longer.

THE COURT: Did you know him in 1972?

THE WITNESS: Yes, I knew him in '72.

THE COURT: That is the time you are inquiring about.

BY MR. ENDLER:

Q That I am referring to. In 1972, sir, the early months, how long had you known him at that point in time, approximately, if you can tell us?

A A couple of months.

Q And, sir, in 1972, the early months, were you familiar with a person named Joseph Silvagnia or Silvagna?

A Yes.

Q And can you tell us, in 1972, the early months once again, how long had you known Mr. Silvagna or Mr. Silvagnia?

A From when?

Anthony Castellani for Government, Direct.

Q Well, from January of 1972 working backwards.

A Working backwards?

Q How long had you known him?

A A couple years, working backwards.

Q Now, sir, other than yourself, in January of 1972, other than yourself and Mr. Giglia, did you have anyone else in your employ at the Riverside Newsstand, anyone else work there?

A Not that I can remember, no.

Q Okay. Were you familiar with who, if anyone, worked at the Kenmore Newsstand with your father?

A Was I familiar with who worked there?

Q Yes. In other words, were you familiar with who worked there, if any, besides your father?

A Oh, Richie worked there.

Q And who is Richie, sir?

A Oh, Richie is Sam's brother, Dickie, Dickie, Jr.

Q Richard Giglia?

A Yes.

Q Now, very briefly, sir, have you ever been convicted of a crime?

A No. I had to plead guilty to a crime. Is that the same thing?

THE COURT: That would be the same thing.

THE WITNESS: Well, okay, okay, yes.

Anthony Castellani for Government, Direct.

BY MR. ENDLER:

Q And could you tell us, sir, how many, if any, crimes you have ever been convicted of or pleaded guilty to, as you say?

A One.

Q And can you tell us when, if ever, that was, the date, in other words?

A The date?

Q Approximately.

A Well, that was in the year of 1973 that I had to plead guilty.

THE COURT: It is like birthdays, Mr. Endler, it is hard to recall. If you have a particular date and a particular charge - -

THE WITNESS: I don't know exactly.

THE COURT: Why don't you tell us or put it in your question.

BY MR. ENDLER:

Q On or about, directing your attention back to September 8th of 1972, sir, did you, on that occasion, enter a plea to a gambling violation?

A Yes, sir, yes, sir.

Q And, sir, as a result of that plea or to that gambling violation, did you receive any sentence?

Anthony Castellani for Government, Direct.

A No, I got a suspended sentence.

Q Well, what, if any, sentence, - well, sir, may I
direct - -

THE COURT: Mr. Endler, please. You have
certain information and you know what
it is and I do not think there is going
to be any, - this may be leading, but
I do not think we are going to have any
objection to it as leading. Why don't
you spell out on the record what you
have in the court record.

MR. ENDLER: Fine.

THE COURT: And then we will have the witness'
direction focused on what your inquiry
is.

BY MR. ENDLER:

Q Fine. Sir, as a result of this plea, did you receive
five years probation and a thousand dollar fine?

A Yes, sir.

Q Now, sir, directing your attention back to 1972, other
than the business you have told us about at Riverside
Newsstand, were you engaged in any other form of
business, sir?

A Well, I pleaded guilty to that. Yes, the former

Anthony Castellani for Government, Direct.

business, do you want to know what that was in?

Q Yes, back in 1972.

A Yes, in 1972, I was a bookmaker.

Q And, sir, when you say you were a bookmaker, could you tell us exactly what you did?

A What I did?

Q Yes.

MR. FAHRINGER: Excuse me, your Honor. I would like at this point just to register an objection that none of this be binding on Mr. Todaro.

THE COURT: I will overrule the objection. That is quite a general question.

MR. ENDLER: Yes, sir.

THE COURT: Can you be a little more particular?

MR. ENDLER: Yes, your Honor.

THE COURT: Do you want him to tell us what a bookmaker does or what he did? I do not know.

BY MR. ENDLER:

Q Sir, in your own understanding, could you tell us what you understand the term "bookmaking business" to be?

A In my own term? It is a person who accepts wagering on horse races from a number of people and the object

Anthony Castellani for Government, Direct.

is to gather as many customers as you can to work on the volume. This way, like Peter pays Paul and, therefore, you don't get hurt. That's bookmaking.

Q And, sir, in your particular bookmaking business, can you tell us what, if anything, you accepted bets or wagers on, what type of events, if any?

A If any?

Q Well, what type of events were you accepting bets on back in 1972?

A In 1972, I would accept bets on horse racing, basketball games and mostly football games.

Q In other words, sporting events and horse races, is that correct, sir?

A Yes, mostly horse racing, though.

Q Now, are you familiar with an apartment, or were you back in 1972, with an apartment located at 387 Ontario Street, in the City of Buffalo, New York?

A Yes, I am familiar with it.

Q And, sir, at that time, back in the early months of 1972, can you tell us who, if anyone's apartment that was?

A That was Julia Martin's apartment.

Q And, sir, can you tell us, - well, first of all, sir, can you tell us where, if anywhere, you actually conducted your bookmaking business? In other words,

Anthony Castellani for Government, Direct.

at what locations?

A I conducted my business in the Riverside Newsstand.

Q Okay. Was there anywhere else, sir?

A No.

Q Sir, this apartment we have been discussing at 387 Ontario Street, did you have occasion to be in that apartment and use the telephone in that apartment, sir, back in 1972?

A Yes, I did.

Q And could you tell us, sir, did you accept bets or wagers over the telephone at 387 Ontario Street?

A Yes.

Q Sir, are you also familiar with an apartment, or back in 1972, that is, located at 476 Terrace Boulevard in Depew, New York?

A No, I am not familiar with that place.

Q Now, sir, the apartment at Ontario Street, was there any particular time of day that you would use the telephone there?

A Yes. I would go there between 5:30 and 6:00.

Q 5:30 and 6:00 in the evening?

A Yes.

Q Now, sir, other than yourself, who else, if anyone, was engaged in this bookmaking business with you?

A There was me and Sam.

Anthony Castellani for Government, Direct.

Q Sam?

A Sammy.

Q Could you tell me his last name, please?

A There was me and Sam Giglia. Sam Giglia was my partner.

Q Was there anyone else, sir?

A There was my father, Mr. Castellani.

Q That is Steve Castellani, right?

A Steve Castellani.

Q Yes.

A And there is Dickie Giglia.

Q Yes, sir.

A And they had their own business and we had our own business.

Q Was there anyone else, sir?

A No, absolutely not.

Q Sir, do you remember testifying before the grand jury on January 30, 1973?

A Do I remember?

Q Yes, sir.

A Yes, I remember that day.

Q Have you had occasion - -

MR. FAHRINGER: This is objected to, if it please
your Honor.

THE COURT: Step over here a minute. Mr.

Discussion.

Knisley.

(Sidebar conference had between
Court and counsel as follows:

THE COURT: You have some testimony that you
believe was different?

MR. ENDLER: Yes, your Honor, the grand jury.

THE COURT: Have you had the grand jury testimony?

MR. FAHRINGER: Yes, I have, Judge. I have seen
it. It has been supplied to me.

THE COURT: Maybe we will have to have the
jury step out so we can thresh this out.

MR. FAHRINGER: I would think so, Judge. It would
be helpful.

(Sidebar conference concluded.)

THE COURT: Again, ladies and gentlemen, I
think it would be helpful if you step
into the corridor so I can listen to the
discussion of the lawyers and find out
what the problem is.

(Jury escorted from the courtroom.)

Discussion.

THE COURT:

Do I have a copy of this grand jury testimony?

MR. ENDLER:

I handed it to Mr. White the other day. I believe it is marked as a court exhibit.

THE COURT:

Number 10.

MR. ENDLER:

Yes, your Honor. I believe that is it.

THE COURT:

Court Exhibit Number 10, all right. You want to point to certain portions that you believe you should read?

MR. ENDLER:

Well, your Honor, it is at least my contention that these last two answers, by the witness, one that these two operations or what have you are completely separate, and the witness' last answer "four people, that's it". Your Honor, Page 6, 7, 8 and 9, the defendant lists six people who he says are involved in this gambling operation, himself, Mr. Giglia, Mr. Zak, Mr. Silvagna, Sam Giglia and Mr. Castellani. He says that they tabulated the records together every morning and he accepted bets for his father.

Discussion.

THE COURT:

You have not asked him that.

MR. ENDLER:

No. I asked anyone else and he said
"No", four, and that was it.

THE COURT:

You have not asked him anything at
all, Mr. Endler, about the daily
routine. You have asked him was he in
the bookmaking business and he said,
"yes". It is a conclusion, really.
I do not know how much detail we need,
but it does seem to me that before we
get to reading grand jury testimony, that
you ought to ask him further details
about who did what.

MR. ENDLER:

Fine, your Honor.

THE COURT:

If he handled the phones, what he
did; after he got information, what he
then did; how he got information about
the various, - here we have had a series
in these transcripts, - we have a series
of sports bets and we have had a voice
identified as that of the defendant
Richard Todaro and I think that you can
certainly ask him a lot of details about
what it meant when Mr. Todaro and he
had a conversation and then after the

Anthony Castellani for Government, Direct.

conversation what would happen.

MR. ENDLER: Fine, your Honor.

THE COURT: So I think we should set aside the grand jury testimony. Let us not be so quick to try to test out the new rule. Let us have some further testimony. Could you have the jury come back, please.

(Jury returns to the courtroom.)

THE COURT: All right, you may continue.

BY MR. ENDLER:

Q Thank you, your Honor. Mr. Castellani, referring you back once again to 1972, particularly February, were you personally accepting bets and wagers over the telephone at Ontario Street?

A Yes, I was.

Q And were you, yourself, personally, accepting bets and wagers at the Riverside Newsstand?

A Yes.

Q And were you doing this on a daily basis, sir?

A Yes, sir.

Q Okay. Now, sir, at the Riverside Newsstand, could you tell us who, if anyone else, was accepting bets or

Anthony Castellani for Government, Direct.

wagers at the Riverside Newsstand?

A My cousin Sam.

Q This is Mr. Sam Giglia?

A Yes.

Q And was he doing it also everyday?

A Yes.

MR. FAHRINGER: Your Honor, if you will forgive me,
I have a standing objection to all of
this.

THE COURT: Yes.

MR. FAHRINGER: Not being binding on Mr. Todaro.

THE COURT: I think we ought to say, of course,
ladies and gentlemen, that Mr. Todaro,
there is no claim that he was present
here. This is on the general notion it
is hearsay as to him. The Government
will have to connect all of this material
up so at the present time simply because
Mr. Castellani or Mr. Giglia accepted
a wager, you cannot jump to any con-
clusions here. You have to listen and
wait until all this material is assembled
together and then you will listen
carefully to the charge before you make
any decision, so your objection is noted.

Anthony Castellani for Government, Direct.

Mr. Endler.

BY MR. ENDLER:

Q Thank you, your Honor. Sir, and at the conclusion of each day after you accepted the betting action for that day, could you tell us what, if anything, you would do with the betting action?

A What I would do with it?

Q Yes. The following morning, would you take any action with respect to the bets and wagers you have received the previous day and night?

A I would check it out at my own shop, my own slips.

Q And where, exactly, would you check it, sir?

A In the bathroom.

Q I mean at the Riverside Newsstand.

A Yes, in the bathroom. You asked me where I checked the slips out.

Q Did you ever have occasion to take them to the Kenmore Newsstand?

A No, sir, not my slips.

Q Well, did you take anyone's slips to the Kenmore Newsstand back in February, 1972, sir?

A The only thing I took back to the Kenmore News Shop is the information that I wrote the previous night.

Q Well, sir, maybe I phrased the question wrong. What, if anything, did you take to the Kenmore Newsstand

Anthony Castellani for Government, Direct.

each morning during February of 1972?

A Each morning?

Q Well, morning - -

A No. Well, it wasn't, - see, sir, this was my father's business and I didn't have to go there every morning, you know what I mean. He trusted me, you understand what I am saying, like in this type of business, I don't have to go and check everyday, every morning or anything like that.

Q All right, sir, but during February of 1972, sir, did you, in fact, go to the Kenmore Newsstand every morning, you, yourself go to the Kenmore Newsstand?

A You are getting particular and I can't, - did I go every day, - I probably did go there.

Q And did you go there for the purpose - -

MR. FAHRINGER: Your Honor, I object to what he probably did.

THE COURT: Just leave off the "probably" and ask the question again.

BY MR. ENDLER:

Q Sir, in February of 1972, did you go to the Kenmore Newsstand each morning to tabulate the previous day's betting activity that you had received?

A Just on the night action, you see. You know what I mean, it didn't have nothing to do - -

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Q Well, sir, could you explain to us, sir, what you mean by "night action"?

A Yes. There is horses run at Buffalo Raceway every night and the action that I would take on those races, if it pertained to my father, I would tell him, "Mr. "X" called and he gave me so much, \$2, \$3 of action", and he would want to know if it went down, but the reason why I went there, my father was sick. I took his place, in other words, back then if I can remember. He was a sick man.

THE COURT: Mr. Castellani, Mr. Endler, so we can understand, couldn't we start off at the beginning of the day instead of jumping to conclusions here. Simply start off. When would you start going into business in the first part of the day, what time would you get there?

THE WITNESS: What time would I get to the store?

THE COURT: Yes.

THE WITNESS: Oh, I would get to the store around 10:30, 11:00 o'clock.

THE COURT: All right. As far as this book-making, - I know you had other things to take care of, selling newspapers and things of that nature, but as far as

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your bookmaking business, what would be
the first thing you would do?

THE WITNESS: Well, when I walked into the store?

THE COURT: Just tell us.

THE WITNESS: The first thing I would do is get
the Courier and then as I says, I would
go in the bathroom and I would check out
the slips that I received that previous
day from during the day and I would make
out a list out of, oh, say, "Mrs. Brown"
and different names, they go under codes
and - -

THE COURT: Can we do that, Mr. Endler, so we
can understand what this is about, please.
Let us hear the day's routine.

BY MR. ENDLER:

Q Fine. Could you continue then?

A And then I would tell my cousin Sam, Mrs. Brown would
have \$10 coming and so forth. There would be, maybe
the most ten customers. We had a very small business
and we didn't make any money at it either because, you
know, people are lucky. I mean they don't bet to lose.

THE COURT: Why don't you wait for a question.
I suppose some people would win and some

Anthony Castellani for Government, Direct.

people would lose.

THE WITNESS: Yes, your Honor. They would win more than they would lose.

THE COURT: When you say you check out the slips, by "slips", you mean the records from sometime the day before?

THE WITNESS: Yes.

THE COURT: The night before?

THE WITNESS: Yes, your Honor.

THE COURT: This would be some record of a wager that an individual made the night before?

THE WITNESS: Yes. You would have to agree on a figure because if you weren't right all the time, you would lose the customer and that's what happens a lot of times, they have arguments.

THE COURT: Mr. Endler, could you take it step by step.

BY MR. ENDLER:

Q Yes. Now, I would like to take you step by step, sir, starting from the first thing you did in the morning when you went to the Kenmore Newsstand to tabulate, you said, the previous night's action. Would you tell us - -

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MR. FAHRINGER: Objection.

THE COURT: We have already heard that.

MR. FAHRINGER: I didn't hear him say he went to the Kenmore Newsstand every day.

THE COURT: Let us not rush. We are still at the Riverside.

BY MR. ENDLER:

Q Fine. Could you continue - -

THE COURT: Let him testify and tell us what he did. You checked out these slips against the information you received from the Courier Express and then what would you do after that?

THE WITNESS: After that, I would leave the store. Do you want to know my day's activities?

BY MR. ENDLER:

Q Then what would you do, sir?

A I would go to the YMCA and play basketball.

Q Well, sir, with respect to bookmaking?

A I mean, you says - -

THE COURT: No, as far as the business.

THE WITNESS: Nothing. I would leave and that was it.

Anthony Castellani for Government, Direct.

BY MR. ENDLER:

Q What time of day would you leave the Riverside Newsstand?

A Oh, at that time, I would leave around 12:00 o'clock to get out there.

Q And from 12:00 o'clock on, you would have nothing further to do with the bookmaking business?

A No, because my cousin Sammy was there. That was his time to work.

Q All right, sir. Now, once again, I would like to start you in the morning and if you could explain to us your day's activities chronologically, could you tell us what, if anything, you did when you arrived at the Kenmore Newsstand back in February of 1972?

A What I would do?

Q Now, I am talking with respect to this bookmaking business, sir.

A Well, I would talk to my cousin Dickie.

Q Well, could you tell us what time you would arrive there, approximately?

A Either I would go there first to make it easier for myself. I would get there around 10:00 o'clock because I had to get to my store around 11:00 o'clock to check the other slips when my cousin Sammy came for the day, came to work, and that was, you know, what I did.

Q And what would you do while you were on the premises

Anthony Castellani for Government, Direct.

of the Kenmore Newsstand, if anything?

A Well, I would tabulate. You know, figure out who had money coming and that and that's all I done. I done that very seldom. See, I didn't have that much to do with that business. The only time I went in there was when my father was away on vacation or if he got sick.

Q Well, sir, if I can take you once again, chronologically- -

THE COURT: Just ask the question, please.

BY MR. ENDLER:

Q Who, if anyone else, was with you at the Kenmore Newsstand when you did the figuring of who the winners were?

A Who was there?

Q Well, who helped you with respect to figuring who these winners were, if anyone?

A Well, Dickie and I would be there mostly doing the work. What went on when I left, I wouldn't know and I couldn't say.

Q Only when you were present.

A Repeat that, please.

Q Yes. When you arrived at the Kenmore Newsstand in the morning about 10:00 o'clock, who, if anyone else, would help you tabulate this previous night's action

Anthony Castellani for Government, Direct.

and figure out who the winners were?

A Well, you see, the only thing I done was to bring him information on what I took that previous night. See, my job wasn't to tabulate that much. My job was to write and strictly write. That was it, on the phone, see. What he done in his store was, you know, his business. You know, it was his and my father's operation.

THE COURT:

I think maybe Mr. Endler led too much. When you met with him on the occasions when you did meet with Richie, what would you and he discuss and do together?

THE WITNESS:

What would we discuss, we would discuss the losses and the winnings and how much money we had to pay out, but that would come at the end of the week, you know.

THE COURT:

That is one thing. Anything else you would do?

THE WITNESS:

To my knowledge, I can't remember anything else except talk or fool around or whatever, you know, in a day, you know. I don't know. That's about it, sir.

Anthony Castellani for Government, Direct.

THE COURT: Would you go over certain slips together?

THE WITNESS: Well, only if he needed a hand or something, or I couldn't figure out a bet or something, I would ask for his help. I think that's about it. That's all I can remember.

THE COURT: What would happen if a person lost or won, what would, as far as responsibilities between you and he as far as collecting or paying?

THE WITNESS: Well, that would be between him and my father then. He would have some money set aside and he would pay this person. That's what would happen, sir, and if the person lost, he would put the money in his pocket and use it as a bankroll, so-called, because you can't operate without any money.

BY MR. ENDLER:

Q Sir, besides you and Mr. Richard Giglia, was anyone else present with you with regard to this bookmaking business around 10:00 o'clock in the morning at the Kenmore Newsstand?

Anthony Castellani for Government, Direct.

A Was anyone else with us?

Q With respect to this bookmaking business.

THE COURT: Do you mean going over the records?

BY MR. ENDLER:

Q Yes, going over the records and helping you.

A No. There would just be John Zak.

Q And what, if anything, would Mr. John Zak do with respect to going over these records?

A He wouldn't go over our records. He went over what went on in the store, what Dickie took in, you see. He would give him his own slip. See, he had a bigger business, like say, he had twenty customers and I had ten. I could do it myself. Therefore, this man was retired, didn't have nothing to do and he wanted to help out. He wanted to do something with his time, so I guess my cousin Dickie and my father had him do that for them, not for me, though. I can do my own because I didn't have extra money to pay him.

Q Sir, now, previously I believe you said that Sam Giglia, your partner in the Riverside Newsstand took bets at the Riverside Newsstand?

A Yes.

Q And who, if anyone, was Mr. Sam Giglia taking bets for? In other words, who was his employer, sir?

Anthony Castellani for Government, Direct.

A He was his own employer. He was self-employed when he was there. He was my partner.

Q All right. Sir, did, - in February of 1972 - -

MR. FAHRINGER: Again, your Honor, I have to take an objection if he is going to read from the grand jury minutes.

THE COURT: You are not reading from the grand jury minutes?

MR. ENDLER: I am not reading from the grand jury minutes.

THE COURT: He has some notes there.

BY MR. ENDLER:

Q Sir, in February of 1972, did you receive a salary from Richard Giglia and Stephen Castellani?

A A salary?

Q A weekly salary, sir, for taking bets at the Ontario Street apartment?

A Not really, no. I didn't receive a salary. My salary came off my losses, the people that lost with me.

Q No. I am asking, sir, if you actually received an actual outlay of cash each week.

A An outlay of cash? No. They never gave me money. See, he is my father, I helped him. I didn't have to take any money from him. If he wanted to give me money,

Anthony Castellani for Government, Direct.

if he done good that week, he would give it to me.

Do you understand what I mean?

Q Yes, sir.

A No set salary in this business.

Q Sir, of your own personal knowledge, can you tell us who, if anyone, accepted bets at the counter at the Kenmore Newsstand, bets or wagers?

A Well, I wasn't there. I don't really know. I could just go by hearsay who worked there.

Q No. I would like to know, - well, I will ask you a specific question, sir. Do you know whether or not Mr. Joseph Silvagnia or Silvagna took bets over the counter at the Kenmore Newsstand in February of 1972?

MR. FAHRINGER: That is objected to, your Honor,
unless it is his personal knowledge.

THE COURT: I will overrule the objection.

THE WITNESS: Do you want me to answer the
question?

BY MR. ENDLER:

Q Yes, please.

A Did Joseph Silvagna take bets over the counter?

Q Yes, from customers at the Kenmore Newsstand in February of '72.

A I imagine he did, but I never seen him. I wasn't there.

Anthony Castellani for Government, Direct.

MR. FAHRINGER: I will object to what he imagines,
if it please the Court.

THE WITNESS: Because if Dickie had to go to
lunch then he would be there. You know,
either he would put the books away or
whatever, throw the garbage out or do
something like that too.

THE COURT: I will overrule the objection.
This is subject to connection.

MR. ENDLER: Fine, your Honor.

THE COURT: You can tell us what your understand-
ing was of what occurred. What were
Mr. Silvagna's duties as far as you
understood them?

THE WITNESS: Well, his duty was to help out
Dickie. Like I said, the papers would
come in and he can put the books away.
People would come in and, you know,
they would hand him money, you know.

BY MR. ENDLER:

Q Sir, with respect to the bookmaking business - -

A Oh.

Q Could you tell us Mr. Silvagnia or Silvagna, what his
duties were with respect to that?

Anthony Castellani for Government, Direct.

A His duties, like I says, if Dickie went to lunch, he would help out Dickie. You see, that's all he was. He was just like more or less a poop boy. He would just do what Dickie asked him to do. He didn't have no connection with the business, sir, none whatsoever.

Q Did he receive a weekly salary from Richard Giglia or Steve Castellani in February of 1972?

A Did he receive a salary?

Q Yes.

A I don't know that. It was their business. I don't know what they were doing with that.

Q Sir, back in February '72, can you tell us if you know whether Mr. Zak was accepting bets over the counter at the Kenmore Newsstand in February '72?

A Did I know he was? Yes, through my father, my father telling me he had him working there.

MR. FAHRINGER: Object to that, your Honor.

THE WITNESS: But I didn't see him because I was doing my own affairs.

THE COURT: Again, it must be connected.

BY MR. ENDLER:

Q I am sorry. Could you repeat that answer?

A About John Zak?

Q Yes.

Anthony Castellani for Government, Direct.

A Well, John Zak would do the same thing, like he would hang around there and if Dickie would have to do anything or go anywhere or he had to go buy a pair of shoes, go for a haircut, that was his main reason there. This man was retired and he had a lot of time on his hands. That's the truth.

Q And, sir, in 1972, February, did Sarge Sapienza accept bets over the counter at the Kenmore Newsstand?

A Did he?

Q Yes, sir.

A I don't know, because I wasn't there.

Q Sir, from 1972, February, working backwards, how long were you in this bookmaking business?

A Not long, sir. Me and my cousin, we just started to try to make extra money which it didn't work out.

MR. ENDLER: Your Honor, at this time, I would renew my motion based on the witness' answers.

THE COURT: No. You see, you start off talking about Riverside whereas, I understand it, that was Mr. Castellani's main interest and then we get over to Kenmore, and this is up to the jury, of course, to determine the facts, but at least he went from time to time. We heard that around

Anthony Castellani for Government, Direct.

noon he then left usually to play basketball, but I think we should have some inquiry about what he did in the afternoon if this is part of the routine at Riverside before you make any further application in regard to any other course of testimony here. Did you return to Riverside Newsstand during the afternoon?

THE WITNESS:

Yes, your Honor, around 4:00 o'clock.

THE COURT:

All right. At that time, would you then resume your endeavors in this book-making business?

THE WITNESS:

No, your Honor. The races would be over during the day.

THE COURT:

All right. Would you check any results?

THE WITNESS:

No, sir. The results, they are not out yet, unless you had time to listen to the radio.

THE COURT:

We have heard the word "line" used here. What do you mean by "line"?

THE WITNESS:

What do I mean by "a line"?

THE COURT:

In your business.

Anthony Castellani for Government, Direct.

THE WITNESS: In my business?

THE COURT: Yes, or in the business.

THE WITNESS: Okay. "A line" is a guide. That's all it is, it is a guide. It is put up by Las Vegas men, so forth, and they have information on games and they say that "such and such a team is fourteen points better". That's what the "line" is. You know, it's in the New York paper, you can see it.

BY MR. ENDLER:

Q In your bookmaking operation, sir, did you receive the line?

A Did we receive a line?

Q Did you, sir, you personally receive a line?

A Where?

Q Over a telephone at Ontario Street.

A Yes, yes.

Q And, sir, can you tell us who, if anyone, supplied you with the line?

A This I don't know.

Q Sir, other than yourself, who worked or used the telephone at this Ontario Street apartment to accept wagers over the telephone?

Anthony Castellani for Government, Direct.

A Who else worked besides me?

Q Yes, sir, on the telephone there, yes, sir, at Ontario Street.

THE COURT: I wonder, Mr. Endler, we are back now at Riverside at 4:00 o'clock. Did you do anything further then? I mean if there are going to be races in the evening, would you do anything, let's say 4:00, 5:00, 6:00 o'clock at the Riverside location?

THE WITNESS: Yes, your Honor. If I can explain what I done, is that what you want?

THE COURT: Yes.

THE WITNESS: Well, I got there at 4:00 o'clock, and then I would work, work until about almost 5:30, quarter to 6:00, like I said before, and then I would get relieved and then I would go to the premises of the phone, where the phone was. That's what I done.

THE COURT: From 4:00 to 5:30, you would just be in the store?

THE WITNESS: Yes, mostly what you would call, in slang, a straggler might come in for a late race and I would, you know,

Anthony Castellani for Government, Direct.

accept a wager on it, you know.

THE COURT: All right. Go ahead, Mr. Endler.

BY MR. ENDLER:

Q Well, finish with your activities of the day, sir.

What else would you do, if anything?

A That was it. I just, during the day, you know.

Q Then what would you do in the evening or the nighttime?

A The nighttime?

Q Yes, sir.

A Then I would go back to the store and work and close.

THE COURT: I thought then you went to Ontario Street?

THE WITNESS: Yes, I go to Ontario Street.

THE COURT: When you got to Ontario Street, what would you do? Did you have a telephone?

THE WITNESS: Yes.

THE COURT: Will you tell us how you would use the telephone?

THE WITNESS: How I would use it? Well, the people would call for their night action and they would call up during February, they would call up for information on basketball. Probably February they are in basketball.

Anthony Castellani for Government, Direct.

BY MR. ENDLER:

Q And how long would you be at Ontario Street, sir?

A How long?

Q Yes.

A About an hour.

Q And then what would you do, you know, that night?

THE COURT: Can't we find out, - See, the word "action" might mean something to you, Mr. Endler, but it leaves myself and the jury, it leaves us cold. We have got to find out what he did. He accepted phone calls and people would do what. Tell us what they would do. Give us a sample.

THE WITNESS: Well, the people on the other end of the phone would do?

THE COURT: Yes.

THE WITNESS: They would say, "How much is, what's", - see, I can't remember. Are you talking about - -

THE COURT: All right. That is a basketball game.

THE WITNESS: Okay, yes.

THE COURT: You just explain to us. Just imagine we never heard of this before.

Anthony Castellani for Government, Direct.

Explain to us in your own words what the people on the other end of the phone would do and what you would do.

THE WITNESS:

Well, they would call and they would ask for the line, first of all, so you know, there is a basketball game and you have got basketball right in front of you, the sheet, and you tell them. Do you want me to name schools for you, like St. John's is 13, something like that?

THE COURT:

For example, we have listened to a tape and you would have, for example, Cincinnati five and a half.

THE WITNESS:

Yes.

THE COURT:

What does that mean?

THE WITNESS:

Cincinnati, - what does that mean? That means that Cincinnati, the line makers think that they are five and a half points better. That means they have to beat them by six, in other words, for the person to win. If Cincinnati just beats them by five, they are a loser. Is that what you mean?

THE COURT:

All right. Sometimes you use the

Anthony Castellani for Government, Direct.

phrase "in the circle". What would that mean?

THE WITNESS:

Well, that would mean that would be your own judgment to put that game up. "Circle" means there is a key player hurt. Whenever there is a key player hurt, it goes in a circle. It is a gamble either way, for the bookmaker or the bettor. Now, it depends on who has the better information, either the bettor or the bookmaker. Most bettors will stay away from it because they don't have the right information or they don't have the radio on and they don't know which player is hurt and it means they have to put up more vigorish too which they don't like to do. If they want to play \$100, they have to lay a hundred twenty instead of a hundred ten.

THE COURT:

We have heard the phrases here "a dollar". What would that mean?

THE WITNESS:

A dollar on a basketball game, sir?

THE COURT:

Yes.

THE WITNESS:

That would mean a hundred dollars, sir.

Anthony Castellani for Government, Direct.

THE COURT: A hundred dollars. We have heard the phrase "quarter". What does that mean?

THE WITNESS: That means twenty-five. The bettor would have to put up twenty-seven fifty. If he lost, he would lose twenty-seven fifty. If he won, he would win \$25.

THE COURT: Back when you were there on Ontario Street, people would call in and you would have these kind of conversations and then would you make some record of this?

THE WITNESS: Yes, yes.

THE COURT: We have had various people identify themselves by name, "Paul, Joe", whatever.

THE WITNESS: Yes.

THE COURT: And you would mark it all down?

THE WITNESS: Yes. I would put it on a piece of paper like this.

THE COURT: Go ahead, Mr. Endler.

BY MR. ENDLER:

Q Yes, sir. In the conversations is also the term "scratch". Could you tell us what "scratch" means?

Anthony Castellani for Government, Direct.

A Well, do you want me to go into the details?
Well, I will tell, - it means, see, UCLA is playing some team like Canisius and Canisius goes all the way out there. They would be thirty points favored and they would beat them by forty because that's the power rating. That's how strong they are, and they wouldn't put it up and then the bettor would take it, but again it was to your own judgment if this came in, this type of game came in you would either put it up or take it off and this is where my father came into it. He would more or less scratch it, you know.

THE COURT: Do you mean by that that if you told someone "that is a scratch" - -

THE WITNESS: There is no - -

THE COURT: You would not take a bet on it?

THE WITNESS: No. It was my judgment, I wouldn't put it up because it is too easy. You know, you would lose too much money. There wouldn't be no profit in it.

THE COURT: You used the word "vigorish" before. What do you mean by that? I think you explained it, but - -

THE WITNESS: Do you want me to go through it again?

THE COURT: Yes.

Discussion.

THE WITNESS:

Well, "vigorish" is what you work on. You see, a lot of people think that a bookmaker earns a lot of money, but he really doesn't. The only thing he works on is ten per cent. If he has got Mrs. Brown, like I says, betting \$50, she puts up fifty-five. Say, he takes LA and another guy would take Stanford and so whoever wins, you don't care, you wind up with \$5. That's the "vig". That's what you work on. Sometimes you get overloaded, but you can't help that, on one game and you can't help it, but then you move the money, try to get your own action. That again is your own judgment, either to sit on it or move it. Is that good enough?

THE COURT:

Let us do this, we will now be in recess and we will resume tomorrow morning. Again, ladies and gentlemen, do not discuss this among yourselves or with anyone else over the evening hours. Certainly, do not do any reading up or studying up, no talking to anyone. Keep an open mind until you have heard all of

Discussion.

the evidence in the case. Spectators, stay in your places, please, and the jury may go out with the marshal. 9:30 tomorrow. Thank you.

(Jury escorted from the courtroom.)

THE COURT: Before we break for the evening, there are one or two problems. On this Steve Castellani - -

MR. BOREANAZ: He is here, your Honor.

THE COURT: He is here. Maybe if we could have him come in for a minute. Mr. Endler -

MR. ENDLER: Yes, your Honor.

THE COURT: You have a copy of the report from Dr. Zimdahl?

MR. ENDLER: Yes, your Honor, but before Mr. Castellani comes in, I wonder if I could make a comment, your Honor. Your Honor I had hoped to logically progress with Mr. Castellani's questioning into the areas which your Honor is now delving into, what the scratch is and what have you and he is very willing to give us answers, but, your Honor, it is my

Discussion.

opinion based on my reading of his grand jury testimony that every single question as to who was involved, where and what they did was exactly contrary to what appears in the grand jury.

THE WITNESS:

No.

THE COURT:

Mr. Endler, you may be right in the long run, but it just seems to me that, as I explained before, that you wanted to jump into the conclusions here and I do not want to interpose myself into this business, but when we have such terms here as just simple book-making business, evidently you understand it and I do because I have been here for some time, but the jury, they cannot understand it and especially when we have had all of these terms here. I think that to understand what went on, we have to have a daily recital. As far as after we go through this, if you want to then come back to these particular questions, we will take it up and then we will take up the question of whether or not we ought

Discussion.

to have read some grand jury transcript. We are not going to read the grand jury after you ask ten questions. We are not going to read the grand jury transcript after ten questions.

MR. ENDLER:

Fine, your Honor.

THE COURT:

I am not saying you cannot in the long run. I am just saying that you have to ask detailed questions first.

MR. ENDLER:

Your Honor, I was not, at this time, - I might have made the wrong application in proposing that I should read it. I was just going to refresh his recollection as to an answer he gave under oath on a previous occasion.

THE COURT:

On that score, if you want to show him the grand jury testimony now, - -

MR. ENDLER:

That's all I was going to do, your Honor.

THE COURT:

To refresh his recollection, it seems to me that may be a sensible way to proceed.

MR. ENDLER:

I have already given it to him Monday, I believe, your Honor.

MR. BOREANAZ:

I have his grand jury testimony.

Discussion.

THE COURT:

Mr. Castellani, you see Mr. Endler's point. He claims that you said certain things to the grand jury about the connection between the various individuals named here. Now, he claims that your testimony in that regard is different.

THE WITNESS:

There is no, - there is nothing connected, sir.

THE COURT:

Mr. Castellani, do this before you say anything. You look at it and then we will come back tomorrow at 9:30 and we will continue.

THE WITNESS:

I answered his question.

THE COURT:

Excuse me, Mr. Castellani.

THE WITNESS:

I am sorry.

THE COURT:

You may not change your mind and you may change your mind. All I am asking you to do is just read over the prior testimony.

MR. BOREANAZ:

Your Honor, I might just add, for the record, I have been following this very closely and I have a copy of his grand jury testimony and I don't find one single answer that is inconsistent.

Discussion.

The series of questions that Mr. Endler is talking about were predicated by a premise relating to a specific period of time when his father was away. Now, he puts questions to him in a general fashion and does not advise the witness that what he is referring to in his grand jury testimony dealt with a specific and peculiar unique circumstance while his father was away and he did give testimony which might appear to be at variance with that, but he just asked the wrong question. I point that out to you, Dick, for what it is worth.

THE COURT:

We will take that up in the morning. Mr. Endler, what is your position as far as Stephen Castellani is concerned?

MR. ENDLER:

Well, your Honor, he is present in the courtroom, I know, today.

THE COURT:

Why don't you just sit there, Mr. Castellani.

MR. ENDLER:

We have an immunity application similar to the one for Anthony Castellani, your Honor.

THE COURT:

I know, but before we get to that

Discussion.

my question is about the health problem. We have now the letter from Dr. Zimdahl and I understand you agree, Mr. Boreanaz, that Dr. Zimdahl's conclusion is that Mr. Castellani should not testify. Dr. Zimdahl, I think that I should note, has been used by the Government through the years for examinations and certainly is held in high regard in this community as a man who has a good deal of experience and authority and this is a heart problem, I believe.

MR. ENDLER:

Yes, your Honor.

THE COURT:

What is your position on the health situation?

MR. ENDLER:

Frankly, your Honor, I have absolutely no quarrel with Dr. Zimdahl's qualifications. I am sure he is the finest, but this letter Mr. Boreanaz gave me Monday said he should not undergo any undue anxiety or stress. I do not see how testifying truthfully at trial would cause any undue anxiety or stress.

THE COURT:

Have you ever been a witness, Mr. Endler?

Discussion.

MR. ENDLER: Yes, I have, your Honor.

THE COURT: Is it a pleasant obligation?

MR. ENDLER: It depends which side you are called by, your Honor.

THE COURT: Mr. Boreanaz, could I see the letter, please?

MR. BOREANAZ: Yes, your Honor. That is the same copy. Yes, your Honor, that is the copy of what I have supplied Mr. Endler with. It is a letter dated March 9, 1976, written by Dr. Zimdahl.

THE COURT : Mr. Boreanaz, I would like to ask Mr. Castellani, Anthony Castellani some questions about the routine of his father. It seems rather than have the witness Mr. Stephen Castellani sworn and ask him about "What are you doing day in and day out", and the other thing that it seems to me could be done is that you and Mr. Boreanaz could make a joint phone call to Dr. Zimdahl and ask whether or not some procedure could be worked out so that perhaps he could testify for maybe fifteen minutes and take a break, something along that line.

Discussion.

MR. BOREANAZ:

That is agreeable, your Honor.

THE COURT:

On the one hand, I do not want to, -
I mean, it is clear he is not in healthy
condition, but as far as testifying, if
we go slow here, it may not be that bad
and Mr. Castellani is here and I certainly
give him good credit for cooperation
and being present. Do you have any
objection if I ask Mr. Castellani some
questions?

MR. BOREANAZ:

Absolutely none, your Honor.

THE COURT:

This is just about your father's
health and I am concerned, Mr. Castellani.
I do not want to have anybody testify
if it is going to set them back as far
as their health is concerned. He has
been, evidently, under the care of
Dr. Zimdahl for some time. Is your
father living here in the City of Buffalo?

THE WITNESS:

My father lives in the city?

THE COURT:

Yes.

THE WITNESS:

Yes. No, not in Buffalo, in Amherst.

THE COURT:

In Amherst?

THE WITNESS:

Yes.

THE COURT:

Evidently, in years past he went to

Discussion.

Florida for trips and so forth?

THE WITNESS: Yes.

THE COURT: He went in 1972?

THE WITNESS: Yes.

THE COURT: Did he journey to Florida this year?

THE WITNESS: No, your Honor.

THE COURT: I see. Has he been in the hospital for the last six months? Did his illness require him to go to the hospital?

THE WITNESS: The last six months?

THE COURT: Maybe you do not know.

THE WITNESS: No, I don't know. He just got it in time, your Honor. He had to be in bed, see. The doctor put him in bed.

THE COURT: He was in bed?

THE WITNESS: Yes.

THE COURT: At home?

THE WITNESS: Yes, he was home.

THE COURT: But it did not require hospitalization?

THE WITNESS: No, because the doctor got the symptoms after he came back from hunting.

THE COURT: Oh, he was hunting in the fall?

THE WITNESS: Yes, he got excited when he seen

Discussion.

the deer and, you know, went to shoot and he went, - he hit the deer and he went to run and he couldn't run and he got tied up with pain in his arm and that's what caused it.

THE COURT:

All right. Are you familiar with his daily routine? Is he in the house most of the time or is he out?

THE WITNESS:

No, he is in the house most of the time. My mother can't get him out to cut grass even. He is, you know, he is afraid.

THE COURT:

Do you go over to visit him from time to time?

THE WITNESS:

I visit him on Sunday, every Sunday, me and my children.

THE COURT:

You watch television? He is not in bed now?

THE WITNESS:

No, he is not in bed, but he don't move like he used to. He is not one-tenth of the man he used to be physically or mentally.

THE COURT:

He had been in business at the Kenmore News Shop on Delaware Avenue near Kenmore?

Discussion.

THE WITNESS: Yes.

THE COURT: I see, but he does not get over there at all?

THE WITNESS: No. See, my mother took over his place.

THE COURT: I see. He has not been there since the fall?

THE WITNESS: Well, occasionally now. I mean, don't get me wrong. He has been in there, but he goes in late. He don't go early in the morning. He don't get up early.

THE COURT: I see.

THE WITNESS: He can't, you know, he can't get up.

THE COURT: Does he go over every day or every other day?

THE WITNESS: Well, you see then again, I am at my store. He may go there every other day, you know.

THE COURT: Do you know about how long he would stay when he got there?

THE WITNESS: Well, he would stay just about an hour, you know, as I know, but like I say, I am not there.

THE COURT: At home your mother and father are

Discussion.

at home. Is there anyone else home with them?

THE WITNESS: No. I am the only child.

THE COURT: I see.

THE WITNESS: So they are alone.

THE COURT: They are living alone and together in Amherst, is that right?

THE WITNESS: Yes.

THE COURT: Mr. Endler, we are going to have Mr. Castellani back in the morning. You contacted Dr. Zimdahl. See if you can do it this evening.

MR. ENDLER: Fine, your Honor.

THE COURT: Tell him of my concern and, Mr. Boreanaz, if you could make this a joint call, it seems to me the best way to proceed and maybe you could talk to your client in the meantime to see what we can do here as far as working this out. It seems to me if he has been over there, even if his duties at the store are minor, if he has been sort of filling in at the noon break or something, it seems to me that, - I am not that familiar. I will certainly follow Dr. Zimdahl's

Discussion.

guidance.

MR. BOREANAZ: I think we could work something out, your Honor.

THE COURT: Now, Mr. Giglia - -

MR. ENDLER: Yes, your Honor.

THE COURT: Have we heard from Mr. Giglia?

MR. BOREANAZ: Of course, I have been in the courtroom, your Honor. I don't believe he has appeared outside. Your Honor, I have no explanation to offer the Court as to why he is not here. I would be, - of course, I have been in the courtroom throughout the afternoon and I have not been in contact with my office, but I can assure the Court that I will report promptly tomorrow morning and give you a full report on his whereabouts.

THE COURT: Mr. Endler, you have Mr. Giglia and are there some other witnesses?

MR. ENDLER: No, your Honor, and I think for the orderly progression of this trial, pursuant to all the proceedings we have had in this case, the Government is going to apply for a court process to

Discussion.

bring Mr. Giglia to the court tomorrow. I do not think he will appear here and if he doesn't, I do not think your Honor, - or the Government can apply for an adjournment until such time as Mr. Boreanaz can obtain him.

THE COURT:

I will take up the problem of adjournments and we will then have to determine what to do. As far as process is concerned, what do you say to that, Mr. Boreanaz?

MR. BOREANAZ:

I have no objection to anything. I believe I can bring him here tomorrow morning, your Honor.

THE COURT:

Let us wait until tomorrow morning and then we will determine what to do. If you have any information which I should have or Mr. Endler should have during the evening, Mr. Boreanaz, you relay it to me.

MR. BOREANAZ:

I will, your Honor.

MR. ENDLER:

Your Honor, one very quick thing. If, perchance, Mr. Giglia does not appear, would the Court give the Government a few hours adjournment to

Recess.

seek - -

THE COURT: We will take it up as we go,
certainly.

MR. ENDLER: Fine. Thank you.

THE COURT: Very well. We will be in recess.

(Recess taken at 5:12 p.m.)

Proceedings, dated 4-22-76.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES

-v-

CRIMINAL DOCKET
NO. 1973-96

RICHARD JOSEPH TODARO,

Defendant.

Proceedings of trial held before the
HON. JOHN T. CURTIN, United States District Judge, and a Jury,
in Part I, United States Court House, Buffalo, New York,
resuming on April 22, 1976.

APPEARANCES:

RICHARD J. ARCARA, United States Attorney,
by RICHARD D. ENDLER, Esq., and
DENNIS O'KEEFE, Esq., Attorneys,
United States Department of Justice.

LIPSITZ, GREEN, FAHRINGER, ROLL, SCHULLER
& JAMES, Attorneys for the Defendant;
HERALD P. FAHRINGER, Esq., and
PAUL J. CAMBRIA, JR., Esq., of Counsel.

HAROLD J. BOREANAZ, Esq., Attorney for
the Witness Anthony Castellani.

Discussion.

PROCEEDINGS: April 22, 1976, 9:35 a.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury not present.)

THE COURT: Mr. Endler, Mr. Panringer, are we ready for the jury?

MR. ENDLER: No, your Honor. Mr. Boreanaz is here and I think first we should have a discussion of the status of the witness. I wonder if I could ask Mr. Boreanaz about the status if any of Mr. Giglia this morning.

MR. BOREANAZ: Your Honor, I am sorry to report I cannot locate Mr. Giglia.

MR. ENDLER: The Government renews its request for an arrest warrant of Mr. Giglia.

THE COURT: I will grant that application, Mr. Endler. Why not have Mr. O'Keefe go with Mr. White so we can get the papers and we can get the matter going ahead immediately.

MR. ENDLER: Fine, your Honor. Your Honor, also it is my understanding from talking to Mr. Boreanaz that as long as we proceed

Discussion.

slowly and maybe take a break every once in awhile, Mr. Stephen Castellani can testify.

MR. BOREANAZ:

I spoke with Dr. Zimdahl on the telephone this morning, your Honor. As a matter of fact, about ten or fifteen minutes ago. There is no question but that what the witness has a serious and documented cardiovascular problem. He suggested first that we explore the possibility of taking the witness' testimony in chambers. I told him I was of the belief that that was impractical and would not work due to the fact that the defendant is on trial in court before a jury. He suggested that as an alternative that we proceed with caution, that at the first indication of any form of anxiety or duress that you terminate and take a recess. Now, I asked him if he could get through to you to place a call to you so you could get it directly from him, his advice in this regard. Anxiety or stress could bring on a serious cardiovascular incident as far

Discussion.

as the patient is concerned. That is the doctor's judgment. Now, I have just spoken to Mr. O'Keefe. Unfortunately Mr. Castellani left his home this morning without his nitroglycerin and I asked Dr. Zimdahl to call a downtown pharmacy and we are trying to make arrangements to get some of those here at the moment.

THE COURT:

We are having the testimony of the other witness. It seems to me it may be more comfortable for Mr. Castellani to wait at some other place rather than the courthouse here for his testimony.

MR. BOREANAZ:

I think it would be, having traveled from my office to here with him, your Honor, he moves at such a slow pace, I think it would be better if he sat outside in the corridor, frankly.

THE COURT:

We are using all the space upstairs. Well, all right. I will leave that to your good judgment, Mr. Boreanaz. How long do you think we will be here with Mr. Castellani?

MR. ENDLER:

Anthony you are referring to?

Discussion.

THE COURT: Anthony. Will we be all morning?

MR. ENDLER: Based on yesterday's testimony, your Honor, I expect at least all morning and maybe into the afternoon.

THE COURT: Mr. Fahringer.

MR. FAHRINGER: Judge, I tell you my cross, I think, would be extensive.

THE COURT: Do you think it would be better if Mr. Castellani went back to his home and came back here at 2:00?

MR. ENDLER: Maybe after Anthony Castellani gets off the stand we could take a twenty-minute recess and make a call then.

MR. BOREANAZ: I will work out something to make him comfortable.

THE COURT: Because to have him sit on the hard bench all morning where if he could go to his home and come back.

MR. BOREANAZ: I will work something out, your Honor.

THE COURT: Very well, Mr. Boreanaz. Whatever your judgment calls for.

MR. FAHRINGER: Your Honor, may I just ask whatever is done with Mr. Giglia I hope with the cooperation of the United States Attorney

Discussion.

it won't be publicized.

THE COURT:

We have no press here now. We did yesterday afternoon and then we didn't and I meant to give the jury instructions and I did not, but I do not think anything was said in the Courier this morning.

MR. FAHRINGER:

No, Judge. I don't think there has been any need for instruction at this point.

THE COURT:

Very well. I do not think we should do that. It should be something in aid of the trial of the case. Anything else before we go ahead?

MR. ENDLER:

Not at this time, your Honor.

THE COURT:

Have the jury come up, Mr. White. Mr. Castellani, you were sworn before and you are still under oath. We will just wait until the jury comes.

(Jury returns to the courtroom.)

THE COURT:

Ladies and gentlemen, now that you are all here I will have you stay right here, but there is a telephone call I should make and it is rather important

Anthony Castellani for Government, Direct.

so I will step off for just a minute and
be right back.

(Recess taken at 9:45 a.m.)

* * * * *

PROCEEDINGS: After recess, 10:00 a.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury present)

A N T H O N Y C A S T E L L A N I, a witness called by and
in behalf of the Government, having been previously duly
sworn, resumed the witness stand and testified further as
follows:

DIRECT EXAMINATION BY MR. ENDLER: (Resumed)

THE COURT: All right, Mr. Endler.

BY MR. ENDLER:

Q. Thank you, your Honor. Mr. Castellani, when we recessed
yesterday I believe you were explaining certain terms

Anthony Castellani for Government, Direct.

that were used. At this time I would like to continue and ask you if you can tell us if perhaps someone calls in and says "Witchita's a pick", can you explain what that term "a pick" means?

A. "A pick"?

Q. Yes, that term.

A. "A pick" is, - there is two teams playing, Witchita might be playing Witchita State and it is a close game so the guide would come in which is the line and it would say "pick". It means just pick the team, just what side they like the better. That's a pick.

Q. In other words, neither team is favored?

A. Right. There's no odds.

Q. And, sir, if someone also along the same line would call in and say, for instance, "Game 55", could you tell us what "Game 55" or "Game 64", what does that refer to, sir?

A. Well, that refers to the, - that's a number on the side of the game. Now, Ohio State may be 55 so you would say, you would look on the numbers and you would see that the Ohio State is 14. Is that what you want?

Q. In other words, "Game 55" is the 55th game on some sheet?

A. Right. It's the last game it would be, almost.

Q. Now, when a person would call you would you have one of these sheets in front of you listing all the games?

Anthony Castellani for Government, Direct.

A. Yes, I would.

Q. And would the person calling you, he would have to have a list too, is that correct?

A. Apparently, yes.

Q. So when he said "Game 55" you could look on your sheet and know exactly which game he was referring to?

A. Yes.

Q. Now, sir, if during one of these conversations a person would say, "I want to place a dollar bet on Game 55", would you write it down or make any notation of it?

A. Yes.

Q. And what, - well, first of all, can you tell us what would you actually write? If someone said "Give me a dollar on Game 55", what would you write down on a piece of paper?

A. Well, Game 55 would be like Ohio State, like I said, so I would put down "Ohio State minus" whatever they were if they were the favorite. If they weren't the favorite, I would put down "plus".

Q. Now, this sheet that you have in front of you listing the games, do you make this notation on the sheet or on some other piece of paper?

A. On another piece of paper.

Q. Okay. Sir, now, if during the course of the night other people call in, do you have a separate piece of paper

Anthony Castellani for Government, Direct.

for each person or do you put it all on one piece of paper?

A. Well, I would put it all on one piece of paper.

Q. So that there is one piece of paper for every bet you receive that evening, right?

A. Yes, sir.

Q. Now, also, sir, if someone calls in and for instance they say "This is Art", A-r-t, nothing else, sir, can you tell us how, if any way, you know who Art is?

A. No way.

Q. Well, do you put on the piece of paper, say Art is the person who makes this dollar bet on Game 55.

A. Yes.

Q. What do you write on the piece of paper so you will remember who bet this dollar with you on this game?

A. "Art".

Q. Now, sir, does there, - there comes a time, I suppose, when the games have been played and you have to go back and figure out whether Art won the bet or you won the bet, is that correct?

A. Right, yes.

Q. Now, in this example, say you win the bet. How do you know how to get a hold of Art to say "Give me the money now, you lost"? In other words, how do you know who Art is?

Anthony Castellani for Government, Direct.

- A. Well, sir, I don't get a hold of him that day, first of all.
- Q. Well, could you tell us when you would get hold of him and then how you would get hold of him, sir?
- A. Well, sir, if he had the money he would come at the end of the week and present himself to whoever's customer he was, Art.
- Q. In other words, are you saying that at the end of the week --
- A. Yes.
- Q. Once a week Art would come in?
- A. Yes, if he had the money.
- Q. Now, say Art on the other hand won. In other words, the team he bet on, he won the bet?
- A. Yes.
- Q. When would you give him any money that he might have won?
- A. The same time, the end of the week.
- Q. In other words, once a week you would meet with Art and either he would pay you or you would pay him?
- A. If he was my customer.
- Q. Well, if he was your customer?
- A. Yes.
- Q. But once a week you would pay him or he would pay you?
- A. Right.

Anthony Castellani for Government, Direct.

- Q. Now, also, sir, when, - if someone calls in and identifies himself as "Number 20", or, "This is Number 20" --
- A. Yes.
- Q. Now, sir, is that a person's true name, "Number 20", or is that a code name of some sort?
- A. Yes. Like I said last week, - I mean yesterday, excuse me, it is like a code, yes.
- Q. It is a code name?
- A. Yes.
- Q. In other words "Number 20" is not this individual's real true name.
- A. No, no.
- Q. Now, staying with "Number 20" and for the minute taking the example that he is one of your customers, how does he get that code "Number 20"? In other words, how does he get that designation, who gives it to him?
- A. Well, that's a funny thing like sometime that could be his lucky number and he could tell you, "I want to be called Number 20", and let's say he drives a car and he likes that color, he will say, "I want to be called Mr. White" for the simple reason that he thinks he is going to be lucky with that name. That's why I think they, you know --
- Q. Well, what I am asking you though is does the better or the customer, does he call you and say "This is my

Anthony Castellani for Government, Direct.

code name" or do you give him a code name?

A. It's agreeable. It's agreeable when you first make the customer, you know.

Q. Sir, one other question, and sticking with this "Number 20" --

A. Yes.

Q. Example, and for the minute let's assume that "Number 20" is Mr. "John Doe".

A. Yes.

Q. When Mr. John Doe calls, why doesn't he say, "This is John Doe", why does he say "Number 20"?

A. I don't know.

Q. I am referring to your customers, the customers you dealt with, not anyone else's, but why did you in your operation use "Number 20" or any other designation other than a person's real true name?

A. Because they don't want their true name divulged over the phone.

Q. In other words, this code was to hide their identity?

A. Apparently, yes.

Q. Now, sir, if "Number 20" once again is your customer --

A. Yes.

Q. And we will assume that, other than Mr. "Number 20" and yourself, who else would you tell that Mr. John Doe is "Number 20"?

Anthony Castellani for Government, Direct.

- A. Who else would I tell?
- Q. In other words, did you tell anyone other than yourself because he is your customer that Mr. John Doe is "Number 20, he is my customer", or is that something you kept within your own brain, a secret, so to say?
- A. I wouldn't tell it to anyone, you mean a stranger?
- Q. Well, anyone? Would you tell it to anyone who is not involved in your bookmaking operation?
- A. Who is not involved? No, I wouldn't say anything to anybody.
- Q. So that the person's designation "Number 20" was known simply by the customer and you and that would be it?
- A. Yes, that would be it, yes.
- Q. Now, and on this piece of paper you are keeping each night if Mr. "Number 20" made a bet, you would put "Number 20"?
- A. Right, yes.
- Q. Now, sir, are you familiar with a term called "bottom sheet"?
- A. "Bottom sheet", yes.
- Q. Could you tell us what your understanding of this term "bottom sheet" or "bottom" is?
- A. A "bottom sheet" is the winnings and losings of that particular day and you have to have that so there is no arguments over the phone with your customer, and

Anthony Castellani for Government, Direct.

that's the bottom sheet, like either he won or lost and you have that in front of you. It is on one sheet.

All you have to do is like you are saying "Number 20" called. You would put, very simple, you would put "minus" whatever he bet, fifty, he is minus fifty-five.

Q. So in other words if "Number 20" bet \$50 and lost it, his bottom sheet for that day would show "Minus 50", is that correct?

A. Fifty-five.

Q. Fifty-five, I am sorry, with the vigorish?

A. Yes.

Q. And is there a bottom sheet kept on each and every customer that you have? In other words, each customer has his daily tabulation of what he either owes your operation or you owe him?

A. Yes, yes.

Q. Now, are these updated daily? In other words, every day you constantly change them to reflect any further bets?

A. Yes. They have to change. If he is, you know, a steady customer, but they don't call all the time, you know, like you would get certain bettors would call and they would shop around for the best line of the day and sometimes they wouldn't call you back. Is that what you mean?

Anthony Castellani for Government, Direct.

- Q. No. I was just wondering if this bottom sheet we are referring to for each customer --
- A. Yes.
- Q. If everytime he makes a bet, say on Day 1 he makes a bet and he owes you \$55 --
- A. Right.
- Q. And Day 2 he makes another bet for \$20 but he wins it --
- A. Yes.
- Q. You then show that he only owes you \$35?
- A. Yes.
- Q. In other words, it is updated?
- A. Yes.
- Q. For each bet?
- A. Yes, you know.
- Q. Now, sir, at the end of the week as you said when you settle up with your customers, you either pay them or they pay you?
- A. Yes.
- Q. Do you have this bottom sheet with you to show them what you say they owe or you owe them?
- A. Sometimes.
- Q. Now, sir, in your operation did they, did your customers come to you or did you go to them to settle up?
- A. In my operation they would come if they had money coming but if they owed money, they wouldn't show up on time.

Anthony Castellani for Government, Direct.

I mean that's the way it is. I am telling you the truth, you know.

Q. Now, sticking with "Number 20", this \$55 we have been talking about --

A. Yes.

Q. At the end of the week, - what was the end of the week, Friday, Saturday, what was the end of the week in your operation?

A. Well, it's a Monday, usually.

Q. Monday?

A. Or a Tuesday, you know, it varies.

Q. But it is usually a Monday or a Tuesday?

A. Sometimes, yes.

Q. Now, sir, come Tuesday and Mr. "Number 20" is not coming to you with the \$55, would you contact him to collect this money or what, if anything, would you do?

A. Nothin'.

Q. Nothing at all?

A. Nothin' at all.

Q. Would you continue to accept bets from him over the phone, I mean, if he hadn't paid you?

A. No.

Q. So in other words your action was to stop taking his betting action?

A. Only if he says he could pay the \$55. If he said, you

Anthony Castellani for Government, Direct.

know, if he made up or if he give me a legitimate story, yes, maybe he was ill, you know, depend' on the individual, you have to use your own discretion on certain people.

Q. On a per customer basis?

A. Yes, because you don't want to go too far because it hurts the situation, you know.

Q. Now, sir, these bottom sheets we have been talking about for each customer, at the end of the week, on Monday, I am sorry, if "Number 20" does come in and give you the \$55, what do you do with the bottom sheet? Do you start a new one, keep this one, or in other words, what happens to that sheet?

A. The sheet?

Q. Yes.

A. Well, if everybody comes in, you know, and you got a little piece of paper like this and each name is on it, say everybody came in on a Monday, you would just get rid of it.

Q. Throw it out?

A. Yes.

Q. And then you would take a new sheet to start the next week?

A. Yes.

Q. And if someone didn't pay, you would keep that sheet

Anthony Castellani for Government, Direct.

until they did pay, this bottom sheet?

A. Yes. There was a lot of names.

Q. Now, sir, there is also a term mentioned called "the top". Can you tell us what you understand "the top figure" or the term "top" to mean?

A. "Top figure"?

Q. Yes, sir.

A. I am not too familiar with that, sir. "Top figure", I don't think I used that too much, "bottom" or "top". I can't remember.

Q. Now, if somebody calls in, sir, and says, for example, like "Number 20", "I figure it's eighteen hundred your way", can you tell us what he means "your way", what does that mean?

A. That means I have eighteen hundred coming.

Q. In other words, "Number 20" owes you eighteen hundred?

A. Me, yes, if he was my customer.

Q. If he says "eighteen hundred my way", you owe him eighteen hundred?

A. Yes.

Q. So "your way" and "my way", is that just another way of saying what is on the bottom sheet?

A. Yes, yes.

Q. Sir, I don't know if you explained this yesterday, but if someone calls in and says, for instance, "Dartmouth

Anthony Castellani for Government, Direct.

two and a half over Harvard", now, could you tell us what is the half point, could you explain just how that works to us?

A. The half point?

Q. Yes. In other words, how would you figure who won or lost when there is a half point in there?

A. In whose favor, Dartmouth's?

Q. Well, let's say Dartmouth is favored by two and a half points over Harvard.

A. Okay. Dartmouth and Harvard is a rivalry so it is usually a low line, so it's two and a half, Dartmouth is at home, they are two and a half favorite. It usually comes out they will win 63 to 60. That means Dartmouth is the winner by the half point. They beat them by three and what side the bettor had, he will win or lose. If he had Dartmouth, he is a winner because he is three up and if he took the other side, he is shy the half a point.

Q. All right, sir. Now, sir, if the same on the other hand it is Dartmouth by two over Harvard and say the game actually turns out where Dartmouth wins it by only two points, who wins in that case? Do you win or does the bettor?

A. That means nobody collects anything.

Q. In other words, in event of a tie, bets off?

Anthony Castellani for Government, Direct.

- A. Bets cancelled.
- Q. In other words, it is like the bet was never made, is that it?
- A. Right, sir.
- Q. Now, sir, yesterday you explained to us "scratch" and today, sir, you explained these sheets you have and the bettor has with, say, fifty-five games. When someone calls in and says "scratch one, two, three, Davidson seven, scratch five", what does that refer to, "scratch one, two, three," what does that refer to, does that refer to the sheet you have in front of you?
- A. "Scratch"?
- Q. If someone says "Scratch game one, scratch game two, scratch game three, Harvard eight, scratch game five".
- A. Well, that's the line coming in.
- Q. But when they say "Scratch game one", game one says "Dartmouth and Harvard", what does that mean to you about the Dartmouth-Harvard game when they say "scratch"?
- A. Well, that means that either there is something wrong with the game, there is a player hurt or there is a discrepancy of, - if they want to put it up. You know, it is no play, they don't like the game, the odds are in Vegas, they just don't like the game.
- Q. Sir, then when a game is scratched and then I think you said it is up to your discretion --

Anthony Castellani for Government, Direct.

- A. Right.
- Q. Whether or not you want to accept any bets?
- A. Right, because you know yourself after you get a feel of working on the phone if you want to put it up and you know that if the customer did come from Harvard or Dartmouth you could put it up and give him a number and he would bet it. You know, if he is a diehard Harvard man, he will just bet Harvard.
- Q. All right.
- A. That's all.
- Q. Sir, going back again to this "Number 20", I believe you said that someone would call you and say, "My license plate is 20", or "It's my lucky number", or something like that, "I want to be called Number 20", is that correct?
- A. Well, not over the phone.
- Q. They might come into your store?
- A. Yes, like through contacts you would meet the man, you know, and he would be in, you know.
- Q. In other words, sir, I might come into your store and say, "My name is Richard Endler. I want to place a bet with you. Number 20 is my lucky number. If I call you I will just say I am Number 20", is that what would happen, sir?
- A. Yes, most of the time, something like that.

Anthony Castellani for Government, Direct.

- Q. Well, something similar?
- A. Something similar, yes.
- Q. In other words, sir, every person that was your customer at one time or another, you knew his real name or you had to know his real name?
- A. No.
- Q. Well, in those cases where you didn't know his real name, sir, I mean could you tell us how the code, how he got a code name and how he bet with you on those occasions?
- A. I don't follow you, sir.
- Q. On those occasions or with those individuals, bettors where you didn't know their real name?
- A. Yes.
- Q. You didn't know who they were?
- A. Right.
- Q. First of all, sir, how did they get the phone number to call you to place a bet, you don't know who they are?
- A. It is simple. You see, the business is established where you just see a face coming in. I never knew half of my customers' real names. I didn't even know Sarge, and I will give you an example, Sarge. When the FBI came to me and says "Mr. Sapienza", I looked at them and they says "Who is Mr. Sapienza", and I don't know him. I know him as Sarge and as a matter of fact, like

Anthony Castellani for Government, Direct.

"Number 20", I don't know him as "Mr. Fronk". I don't know where he lives. As a matter of fact, if I don't see his car, I don't know what kind of car. It is like on the basis of honesty, like if he comes in and says "I will be here", and this is why the business is no good no more. People don't come and pay me and only people come who have money coming.

Q. Now, I would like to refer back to February of 1972, sir. At that time can you tell us approximately how many customers or bettors, I will refer to them as bettors, your operation had?

A. My operation?

Q. If you can approximate.

A. Ten. I would say about at the most about ten.

Q. About ten?

A. Yes, mine. Mine was small.

Q. And did all of the ten people have code numbers similar to a "Number 20" or "Art" or "Paul", something like that?

A. Well, I only had about two or three customers calling me on the phone and the rest was over the counter.

Q. Well, those two or three who called you, did they have a code?

A. Yes.

Q. Sir, can you tell us back in February of 1972 approximately how much action, betting action you were taking on a

Anthony Castellani for Government, Direct.

daily basis?

A. On a daily basis?

Q. Approximately, yes, sir, or as best as you can recollect?

A. Over the phone or over the counter?

Q. Both, sir, over the phone and over the counter.

A. That I was taking?

Q. Well, your operation.

A. My operation separate?

Q. Right.

A. Well, over the phone it wouldn't be too much for me. It would be, - I would have a couple customers. It would amount to about maybe a hundred, two hundred if I was lucky.

Q. Yes.

A. But over the counter, forty, fifty dollars. Derby Day was one of my biggest days I handled in my, - I handled maybe three hundred at that time.

Q. So in your biggest day you got \$500?

A. If that. I mentioned Derby Day.

Q. This is your best day, the best you ever did was approximately five hundred?

A. Myself, yes.

Q. On your best day?

A. Yes.

Anthony Castellani for Government, Direct.

- Q. Now, sir, when you would take a bet over a phone from say, "Number 20"?
- A. Yes.
- Q. I like to keep with him for a minute, and once again if we could refer to the apartment or the telephone located in this apartment on Ontario Street in Buffalo, New York here.
- A. Yes.
- Q. Sir, say "Number 20" would call you up at the apartment and, sir, if I may, a hypothetical, if you had not received the line information as yet, would you accept any bets from "Number 20"?
- A. Would I accept any bets?
- Q. Yes.
- A. Well, not necessarily, no.
- Q. Now, sir, say once you got the line information and "Number 20" calls back, would you accept any bets at that point, if Mr. "Number 20", of course, wanted to bet, and we are assuming he does wish to place a bet?
- A. Yes. If I thought the line was to my, you know, stand up line, I would put it up, but I would fill in different games.
- Q. In other words, if the line, - referring to Dartmouth-Harvard again --
- A. Yes.

Anthony Castellani for Government, Direct.

- Q. Dartmouth is favored by two over Harvard.
- A. Yes.
- Q. If you wanted to, you could change your line, Dartmouth three over Harvard?
- A. Right.
- Q. Or Dartmouth one?
- A. Right.
- Q. Okay, but, sir, before you get the line, no one has called in, no one has given you the line for that evening's events, whatever they may be, if customers like "Number 20" calls and says, "I want to place a bet," what would you tell him, if anything, or what would you do? Would you take the bet, first of all?
- A. Well, if he was a smart customer I wouldn't give him anything, you know, but then if the line did come in, I would tell, you know, what I mean.
- Q. Before, - I would like to stay before the line comes in.
- A. Yes.
- Q. You have not received it yet and a customer calls up and says "Have you got the line yet", and you say "No" and he says "I want to bet a dollar on Game 55", would you accept that bet?
- A. Yes, sure, if he gives himself away and says he wants to bet Game 55, I will make a line on that too for him.
- Q. What if he doesn't pick out a particular game and he

Anthony Castellani for Government, Direct.

says, "Tell me what the games are tonight," would you accept the bet then?

A. Well, no, no, you know. I mean you have to have a guide. If he points out give me a --

Q. Fine, sir.

A. Okay.

Q. Now, sir, say "Number 20" hangs up and you get another phone call and you get this guide, this line where it says "Dartmouth two over Harvard, Wichita is a pick, scratch one", and --

A. No, none.

Q. And then "Number 20" calls back and says "Give me the games you have got", what would you do then, sir?

A. Well, I would first look at the line.

Q. This line that you had just got in?

A. Yes, and I would compare it.

Q. Compare it to what, sir?

A. To my line, the sports high line.

Q. Pardon me, the sports --

A. The sports high line or the line I got earlier in the day.

Q. Okay. Before we go on, where did you get this earlier line?

A. Where did I get the line?

Q. Over the phone too or somewhere else?

Anthony Castellani for Government, Direct.

- A. Somewheres else, yes, over the phone.
- Q. Over the phone?
- A. Yes.
- Q. And then what would you do, you would do this adjusting as you said?
- A. Yes. You know, I wouldn't go by one, - you can't go by one set line because you can't believe. This is his opinion that that team is fourteen points better. You know, I don't think so, like if Ohio State-Michigan is a rivalry, there is no way Ohio State is fourteen points. I will put the game up at twelve and a half.
- Q. Sir, once you have gotten this guide or this line as you have explained, would you then read back to "Number 20" what the line is that you have made up, comparing this line you just received with any changes you want to make?
- A. Yes.
- Q. And then you would read back to him the same thing "Dartmouth 3, scratch --"
- A. Yes.
- Q. And then after you heard all these, then "Number 20" could place a bet with you on any game?
- A. Yes, anything he wanted.
- Q. Like Game 55?
- A. Yes.

Anthony Castellani for Government, Direct.

Q. Game 64?

A. Yes.

Q. Now, sir, referring back once again to your particular operation in February of 1972 specifically, sir, how did you get the line? In other words, in your operation where did you get the line?

A. Where did I get my own line?

Q. Yes, where did you get your line?

A. Through Sports Eye.

Q. Is that the only place?

A. Then we got it over the phone.

Q. You got it over the phone?

A. Yes.

Q. And, sir, who did you get it over the phone from?

A. This I don't know.

Q. Well, in your operation, who did you make arrangements with to call you up at Ontario Street and say "Call me at this number, 877-4347. I will be there tonight at 6:30 and give me the line", who did you do that with?

A. Who did I make arrangements with?

Q. Yes.

A. I didn't make the arrangements. That wasn't mine.

Q. In your operation, sir, who did you ask to give your operation a line?

A. I didn't ask anybody to give me a line. I didn't go out

Anthony Castellani for Government, Direct.

and make connections with anybody.

Q. Well, you just told us you got it over the phone, didn't you?

A. Right.

Q. Well, who called you on the phone and gave you the line?

A. This I don't know.

Q. Well, who made the arrangements for someone to call you on the phone and give you the line?

A. It could have been my father.

Q. Well now, your operation, sir?

A. My operation?

Q. Yes. We are talking about your operation.

A. No contact whatsoever, sir, with anybody.

Q. Well, sir, did you ever get the line over the phone?

A. Myself?

Q. You.

A. Reach out?

Q. No. Did you ever receive a phone call and receive line information on a phone call?

A. Yes. I just said that, yes.

Q. That is what I am asking you. Who made arrangements for you, Anthony Castellani, in your operation to get the line?

A. My father.

Q. Your father made it for your operation?

Anthony Castellani for Government, Direct.

A. It was one operation.

Q. Oh, it was one operation?

A. Well, it was one operation but separate businesses in one operation.

Q. Fine, so in other words, sir, what you are telling us is one operation, different locations.

MR. FAHRINGER: Your Honor, I --

THE COURT: Excuse me.

THE WITNESS: No, no, no, sir.

THE COURT: Please. I know that is objectionable, it seems to me because it is leading and it is also a conclusion on your part. You may have to leave a little bit.

MR. ENDLER: Fine, your Honor.

THE COURT: But you should not ask leading questions which point to a conclusion.

BY MR. ENDLER:

Q. Fine, your Honor. Sir, referring back to this line, in your operation did you pay anyone to receive the line? I mean did you pay anyone for the line?

A. No.

Q. Do you know if anyone else paid someone for the line?

A. Do I know if anybody else paid for a line?

Q. In other words, the line you got --

Anthony Castellani for Government, Direct.

A. Yes.

Q. Do you know if someone else was paying for you?

A. For me?

Q. Yes.

A. No, there was nobody paying for me, for my operation.
I don't understand your question like.

THE COURT: You were being provided a service,
Mr. Castellani?

THE WITNESS: Yes.

THE COURT: Which was of benefit to you in
running your business?

THE WITNESS: Yes.

THE COURT: Was this free?

THE WITNESS: Was it free?

THE COURT: Yes.

THE WITNESS: This I don't know.

THE COURT: I see. Did you discuss the continu-
ation of getting this service with your
father or with anyone else?

THE WITNESS: No, no, your Honor. That was just
my father. See, my father would --

THE COURT: What would happen if the person who
called the line in to you did not call
for a day, who would you complain to?

Anthony Castellani for Government, Direct.

THE WITNESS: I would tell my father that I had --

THE COURT: Or that it was too late?

THE WITNESS: I would tell my father I had to make up a line, I couldn't use that line.

THE COURT: Then you would call your father, right?

THE WITNESS: Yes. It is important to get a hold of my father, you see.

THE COURT: It is also important in your business, is it not, that you get it early enough so that you can service your customers properly?

THE WITNESS: Yes, your Honor, it is very important.

THE COURT: Let us say you did not get it by a certain time, what would you do?

THE WITNESS: Well, either I would leave or I would tell my father I got my line, I want to use it, and he would say --

THE COURT: I mean in the cases where you did not get it on time.

THE WITNESS: On time?

THE COURT: Would you call your father?

THE WITNESS: No, sir. I wouldn't call him from my office.

THE COURT: You wouldn't call him from the office?

Anthony Castellani for Government, Direct.

THE WITNESS: I would try not to, no. I would wait for him to call me.

THE COURT: All right, but if you left what would you do?

THE WITNESS: Then I would go around to see my father, you know, the next day, or try to get a hold of him at the store and tell him the line didn't come in and so forth which we would do, we would make up our own line or whatever.

THE COURT: Mr. Endler.

BY MR. ENDLER:

Q. Now I believe you said your father made arrangements for you to get the line?

A. Apparently, yes. That's what I understood.

Q. Sir, would you know prior to going to Ontario Street, - well, I am sorry, strike that. Sir, would your father tell you that you would be getting the line tonight, for instance?

A. Would he tell me?

Q. That someone would call you tonight with the line?

A. Well, no, he wouldn't tell me. It would be like a standard thing. It just would be there from, you know --

Q. Well, let me ask you this; you don't know who gave you

Anthony Castellani for Government, Direct.

the line, is that correct?

A. No.

Q. When someone would call you up, though, would they say, "I'm going to give you the line now"? In other words, how would they introduce themselves to you so you would know this is the person who is supposed to give you the line and not a joker, a practical joker or something?

A. Well, "Are you ready", that's it. That's how I would know.

Q. If someone called you up and said "Are you ready" --

A. Right.

Q. You would know that he was going to give you the line and nothing else?

A. Supposedly, yes.

Q. Do bettors ever call up and say "Are you ready"?

A. Well, they don't know that, you know.

Q. Sir, everytime in February of '72 that you got the line, did this person who gave you the line, did he always say "Are you ready"?

A. To the best of my knowledge, yes.

Q. Sir, was there any other code word or words that you used or the person giving you the line used so that as soon as you picked up the phone you knew that that other person on the line was going to give you the line?

A. Was there any other --

Anthony Castellani for Government, Direct.

- Q. Anything else besides the term "Are you ready"?
- A. No, not that I know of, "Are you ready", that's all I remember then, not now. It has been a long time.
- Q. I'm sorry, what about the word "Yean", if somebody called up and said "Yeah", would that mean the line was coming?
- A. I don't know, - no.
- Q. It couldn't?
- A. "Are you ready", I think, is what I remember.
- Q. So if someone called up and said "Yeah" and nothing else, and then someone else said "All right, give me Temple first" --
- A. What do you mean "Give me Temple first"? Nobody would call up and say that.
- Q. I am showing you, I am showing the witness Government Exhibit Number 60, your Honor.

MR. FAHRINGER: What page?

MR. ENDLER: Page 58, call Number 2 at the bottom.
Sir, referring to the bottom of the page,
call Number 2.

THE WITNESS: This here?

BY MR. ENDLER:

- Q. Right.
- A. Do you mean all this?

Anthony Castellani for Government, Direct.

- Q. When someone answers the phone and says "Yeah".
- A. Yes.
- Q. And then someone says "Here you are, just a second", and then, - well, something is attributed to you, "Ah, alright start with Temple".
- A. "Start with Temple".
- Q. That's the person calling in, "Start with Temple"?
- A. Yes.
- Q. And then you say "Start at Temple"?
- A. "Temple is 10. Today's a Wednesday, right."
- Q. Someone says "Yeah, are you ready", and that's it?
- A. Well, "Are you ready", that's what I said, yes, to that order, you know what I mean.
- Q. What about, - I am referring now to the very first page, sir, where something is attributed to you, "Yeah, Hello, Yeah, Yeah, alright, hang on a second".
- A. Yes.
- Q. Sir, would you read that conversation to yourself, just the first page at Page 2 of Government Exhibit 60?
- A. Read this here?
- Q. Yes, just Page 1 and to the bottom of Page 2.

MR. FAHRINGER:

Is that Page 58?

Anthony Castellani for Government, Direct.

BY MR. ENDLER:

Q. No, 1 and 2 of Government Exhibit Number 60.

A. Who is saying that?

Q. No, I am sorry. Could you please read it and then --

A. Yes, sir.

Q. Have you had an opportunity to read it?

A. Yes.

Q. This first conversation on these first two pages.

A. Yes.

Q. Sir, when this person calls in and says to you, "Scratch the top game, Villa Nova's eleven and a half, yeah, scratch one, two, three, one two, three, yeah, and Cincinnati's five and a half in a circle", what was that person telling you, sir?

A. He was giving me the guide for that night.

Q. And is the guide the line?

A. Yes.

Q. So this caller was giving you the line in this first conversation?

A. Supposedly, yes.

Q. Well, I am sorry. Was he or wasn't he? I mean is that what you call the line?

A. Yes.

Q. Turning to Page 42 of Government Exhibit Number 60, sir, at the bottom of Page 42 it says, "Call Number 1",

Anthony Castellani for Government, Direct.

would you read this conversation that begins at the bottom of Page 42 and continues over until about halfway down Page 44, sir. Just read it to yourself for a second, sir. I am sorry, sir, this conversation.

A. Oh, here?

Q. Yes, call Number 1.

A. Okay.

Q. Have you had an opportunity to read that conversation, sir?

A. Yes.

Q. Okay. Now, sir, one of the persons attributed, - this is classified as "Tony", is that correct, and the other is just "male in", is that correct, in this conversation?

A. I don't understand.

Q. In this conversation that you have just read.

A. Yes.

Q. One of the participants is named "Tony", is that correct?

A. "Tony".

Q. And one is named "male in".

A. Yes.

Q. Sir, in that conversation that has been attributed to you, what did the "male in" tell you during that conversation?

Anthony Castellani for Government, Direct.

- A. What did he tell me?
- Q. Well, yes.
- A. Right here?
- Q. All right. He said "Tennessee fifteen and a half"?
- A. Yes.
- Q. I mean through the whole conversation, not that one sentence, what was he telling you?
- A. What was he telling me?
- Q. Yes.
- A. He was telling me that night which teams were favored.
- Q. Well, sir, is this what you referred to as a line?
- A. I refer to it as a guide.
- Q. Well, in your terminology though, sir, "guide" and "line", is there any difference?
- A. Is there any difference?
- Q. Between those terms, what you say is "guide" and what I have been asking you as "line".
- A. Is there any difference? No, you could call them the same, you know.
- Q. Now, in this conversation beginning at the bottom of Page 42, what was the "male in" giving you or telling you?
- A. Right here?
- Q. Beginning at the bottom of Page 42, sir, the conversation you just read.

Anthony Castellani for Government, Direct.

A. What was he giving me?

Q. What was he telling you?

A. He was telling me the night of the games, he was telling me the favorites, you know, the line.

Q. The line?

A. Yes, his line.

Q. Sir, would you turn to Page 48 of the same Government Exhibit 60 and starting at the very bottom of the page, sir, and the conversation actually begins at the top of Page 49, would you read that conversation to yourself now, sir, beginning at Page 49?

A. This here?

Q. Right. Have you had a chance to read that conversation, sir?

A. Yes.

Q. And for the record I was referring to call Number 3. Now, sir, once again there is two participants, a "Tony" and a "male in", is that correct, in this conversation you have just read?

A. Yes, it says the same thing, yes.

Q. Sir, once again in this conversation what was the "male in" telling you? In other words, what was he saying?

A. He was giving me the line.

Q. The line. Sir, could you turn to Page 58 of the same

Anthony Castellani for Government, Direct.

Government Exhibit Number 60, please.

A. 58?

Q. And about halfway down, the conversation that begins at the very bottom of the page where it says "Reel Number A-28", do you see that?

A. No.

Q. Right here, sir, the very bottom of the page.

A. Yes.

Q. Could you read that conversation to yourself and it goes over to the top of Page 60, sir?

A. Here, yes.

Q. Have you had an opportunity to read that conversation, sir?

A. Yes.

Q. And once again, sir, could you tell us what the "male in" or the voice that is attributed to "male in" was telling you during that conversation you have just read, sir?

A. He was giving me the line.

Q. Now, sir, if you will turn to Page 58, the beginning of the conversation. Have you got it?

A. Yes, sir.

Q. And see where it has a notation that this call was made at approximately 6:43 p.m.?

A. Yes, 6:43.

Q. Call Number 2. Sir, would you now turn to Page 60.

Anthony Castellani for Government, Direct.

A. Yes.

Q. And see where it says Call Number 3 at 6:45 p.m.?

A. Yes.

Q. Two minutes later?

A. Yes.

Q. And there is a conversation between supposedly you and a "Coz"?

A. Yes.

Q. Sir, would you read that conversation to yourself in light of the one you have just read and tell us on that night, February 23rd, if you had readjusted the line before you gave out to your customer or whether you gave out the same line that you had gotten in two minutes earlier?

A. Read the --

Q. I am sorry, you are on Page --

A. 60, Page 60. That's it?

Q. Have you had an opportunity to read it, sir?

A. Yes.

Q. Sir, in the first half of this conversation with "Coz" or "Cuz", what were you telling him, or what is attributed to the person "Tony" when you say "Duquesne is 4"?

A. What was I telling him?

Q. Or "Temple is the favorite", yes. In other words, what

Anthony Castellani for Government, Direct.

did you call that when you told him that, on Page 60, the conversation we just read.

A. Page 60?

Q. At the bottom of the page when someone named "Tony" says "Just as long as we're straight. Temple 10, Syracuse 5 and a half scratch, Miami 0 6 and a half, Louisville", et cetera, et cetera, what were you telling "Cuz"?

A. What was I telling him?

Q. Right.

A. I was giving him the line.

Q. You were giving him the line?

A. Right.

Q. And at the end of the conversation, sir, turning to the next page, after you have done this and this "Cuz" supposedly says "Ah, Number 9, Cincinnati".

A. Yes.

Q. And what is the number "9", the same as we were referring to before, Game 9?

A. Yes.

Q. And he says "For a quarter"?

A. Yes.

Q. What does that mean, sir?

A. A "quarter" means \$27.50.

Q. In other words, after you gave the line to "Coz", he

Anthony Castellani for Government, Direct.

placed a bet with you on the Cincinnati game?

A. Yes.

Q. And if you read further down he said "A quarter each", right?

A. Where is that, sir? Okay, yes.

Q. So he made a \$50 bet, is that correct, sir?

A. Altogether fifty-five.

Q. Fifty-five. Now, sir, could you turn to Page 72 of Government's Exhibit 60. Here, the conversation that starts about halfway down, Call Number 13, could you read that conversation to yourself, sir, right now?

A. Just this one here?

Q. This one that starts halfway down.

A. Okay.

Q. Have you had an opportunity to read that, sir?

A. Yes.

Q. Once again could you tell us what, if anything, the "male in" or the voice designated as "male in" was telling you during this conversation?

A. He was giving me a line, sir.

Q. He was giving you a line?

A. Yes.

Q. Now, sir, on Page 74 in the middle of this conversation, and it is the one, two, third "male in" down from the top, or what is attributed to the third "male in" --

Anthony Castellani for Government, Direct.

- A. Over here, you mean?
- Q. Where the "male in" says "scratch and go to 77".
- A. "Scratch and go to 77", yes.
- Q. Sir, what did "go to 77" mean?
- A. Well, it means to go down, you know, the sheet, Number 77 or wherever, to go down.
- Q. To go to Game 77?
- A. Yes.
- Q. In other words, sir, the person who called in whoever gave you the line also has one of these sheets?
- A. Apparently, yes. I don't see him. I don't know what he is reading it from.
- Q. Well, sir, you said "77"?
- A. Yes.
- Q. Excuse me, "South Carolina 6", right?
- A. Yes.
- Q. And next it says "underneath it, Alabama 1"?
- A. Yes.
- Q. You are referring to a sheet, aren't you, when you are talking --
- A. Yes.
- Q. To the person?
- A. Yes.
- Q. And when that person says "Game 77", do you go to Game 77?

Anthony Castellani for Government, Direct.

- A. Yes.
- Q. Could you turn to Page 83, sir.
- A. Page 83?
- Q. Of the same exhibit.
- A. Page 83.
- Q. Yes, 83. I am sorry. At the very bottom of the page, sir, actually the conversation starts at the top of Page 84. No, the next page, Page 84. Could you read that conversation?
- A. This one here?
- Q. Right. Is about half of the page, to yourself.
- A. Okay.
- Q. Have you had an opportunity to read that, sir?
- A. Yes.
- Q. And once again, sir, could you tell us in this conversation you have just read what is the "male in" telling you or saying?
- A. He is giving me the line.
- Q. He is giving you the line again?
- A. He is giving me the line, yes.
- Q. Sir, do you know Richard Joseph Todaro?
- A. Do I know him?
- Q. Yes.
- A. Not personally.
- Q. Have you ever seen him before, sir?

Anthony Castellani for Government, Direct.

A. Yes.

Q. And I ask you to look around the courtroom at this time and tell us if you see the person you know as Richard Joseph Todaro?

A. Yes.

Q. If you do, could you point him out to us, please?

A. Standing right there, seated right there.

MR. FAHRINGER: Stand up.

BY MR. ENDLER:

Q. There is a lot of people, could you describe him?

A. Right there.

THE COURT: The man standing up behind the rail? The man that is now standing up, Mr. Castellani?

THE WITNESS: Yes.

BY MR. ENDLER:

Q. Let the record reflect that the witness has identified the defendant. Sir, how long, if at all, have you known Mr. Todaro the defendant?

A. I don't know him that well. I don't know him. How long I don't know. I met him in my father's, - my cousin's

Anthony Castellani for Government, Direct.

store and my father's store.

Q. Could you tell us approximately, - I don't mean the day, but when you first had occasion to meet Mr. Todaro?

A. No.

Q. Well, was it more than a year ago, sir?

A. It probably was a long time ago.

Q. More than five years?

A. Yes.

Q. Ten years?

A. No.

Q. Well, what is your best estimate as to how long you have known Mr. Todaro?

A. I have met him. I don't know him that well. I don't know him.

Q. Have you ever socialized with him, sir?

A. No, sir, to my best knowledge. Now you are getting to somewhere maybe I ran into him, maybe, but other than that, no, besides "Hello" or something, that's it.

Q. Sir, Richard Giglia, is he your cousin, you say?

A. Yes.

Q. Known him all your life?

A. Well, him, yes, I know him. We lived together.

Q. Is he married, sir?

A. Yes.

Q. Do you know when he was married?

Anthony Castellani for Government, Direct.

- A. The date?
- Q. Well, no, approximately the year.
- A. The year, no, I don't know. I can't remember the year or the date when he got married. He got married a couple years ago, I know that.
- Q. If I said it was November 4, 1971 would that be about right?
- A. Yes, if you have the date, yes, that would be about right. I don't remember the date.
- Q. Were you at that wedding, sir?

MR. FAHRINGER: I object to the relevancy of this, your Honor.

THE COURT: Overruled.

THE WITNESS: Yes, I was at his wedding.

BY MR. ENDLER:

- Q. Were you an usher at the wedding, sir?
- A. Did I stand up for the wedding, do you mean?
- Q. Yes.
- A. Yes.
- Q. And, sir, was there another usher there with you?
- A. Another usher? There was many. You know, there was a couple. No, to the best of my recollection there was about five or six ushers. You mean people that stand

Anthony Castellani for Government, Direct.

up, ushers, yes.

Q. In November of 1971, sir?

A. Yes.

THE COURT: Excuse me. Whose wedding is this?

MR. ENDLER: Mr. Richard Giglia's, your Honor.

THE COURT: All right.

BY MR. ENDLER:

Q. Was Mr. Todaro the defendant an usher with you at that wedding, sir?

MR. FAHRINGER: That is objected to, if the Court please.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. ENDLER:

Q. Sir, have you ever had occasion to talk to Mr. Todaro?

A. Did I occasionally talk to him?

Q. In other words, "Hello, Good morning, how are you"?

A. Yes, if he was there with me at the wedding, I certainly did talk with him, yes, but there wasn't no, - yes.

Is there anything wrong with that, sir?

Anthony Castellani for Government, Direct.

THE COURT: Why don't you wait for a question, please, Mr. Castellani.

THE WITNESS: Sorry.

MR. ENDLER: Excuse me one second, your Honor. Your Honor, at this time I would like to play a conversation from Government's Exhibit Number 59 to the witness. Mr. Castellani, do you have a set of ear-phones there?

MR. FAHRINGER: Your Honor, will you hear us at side bar on this for a moment.

(Side bar conference held between Court and counsel as follows:

MR. FAHRINGER: Your Honor, I would object to this. We have stipulated that this is Mr. Todaro's voice. I think this is highly prejudicial. I don't think it is proper.

THE COURT: I don't know what he is going to do. You are going to have him listen to a conversation?

MR. ENDLER: Yes, your Honor. First I want to know if he is going to identify some voices. There is no evidence, - I have

Anthony Castellani for Government, Direct.

been showing him a transcript saying
"Certain things were attributed to you".
He is the only one can testify --

MR. FAHRINGER: Except on that score the agent
identified the voices.

THE COURT: One way to do it is to show him the
transcript and ask him.

MR. ENDLER: He might say "I don't remember if
I said that years ago."

THE COURT: I suppose he could, yes.

MR. FAHRINGER: Judge, may I ask something?

THE COURT: I am trying to figure out what to
do.

MR. FAHRINGER: I was going to ask you this while
you are deciding that because it relates
to what he is inquiring about, the jury
are sitting there with twelve transcripts
in their laps and I realize they were
used with the tapes as guides and now
they have the transcript. Your Honor, I
wonder if they should have them again.
He is going over things. It seems in
that category it is 3500 material and
it gives undue emphasis.

THE COURT: If he could look at the material,

Anthony Castellani for Government, Direct.

look at the transcript and say "Yes, he was the man, "I talked to these people", would that be enough for your purpose?

MR. ENDLER: No, your Honor, because also I think that it is important to see if he can identify both voices.

THE COURT: We already have the voice, the other voice identified as Mr. Todaro. All right, I will let him listen and you can ask him some questions.

(Side bar conference concluded.)

MR. ENDLER: For the record, your Honor, I have asked Mr. Plumptre to play the conversation that starts at Page 1 of Government Exhibit 60 down to the bottom of Page 2. Put them on this way.

THE COURT: Page 1?

MR. ENDLER: Yes, your Honor.

THE COURT: Down to 2?

MR. ENDLER: The first conversation, in other words, in the transcript, your Honor.

THE COURT: All right, and I think the jurors

Anthony Castellani for Government, Direct.

have heard this before.

MR. ENDLER:

Do you have a transcript, sir?

THE WITNESS:

Yes.

THE COURT:

I suppose it would not be necessary.

The jurors can listen if they desire.

They have already heard it once.

MR. ENDLER:

If I may, your Honor, the jurors have to know what Mr. Castellani is hearing too.

THE COURT:

All right. I think it would be best, ladies and gentlemen, if you listened too. This will be one conversation. We will wait, Mr. Plumpton, whenever everybody is ready.

MR. PLUMPTON:

All right, your Honor?

THE COURT:

Yes.

(Government Exhibit Number 59 for identification, Call Number 20 as transcribed on Pages 1 and 2 of Government Exhibit Number 60 for identification, beginning with the words "Yeah, Hello", and ending with the words "Thank you" was then played.)

Anthony Castellani for Government, Direct.

BY MR. ENDLER:

Q. Mr. Castellani, were you able to hear that conversation that was just played to you?

A. Yes.

Q. Sir, did you recognize any of the voices you heard just now?

A. No.

Q. Neither voice?

A. My voice.

Q. You did recognize a voice?

A. My voice.

Q. Well, sir, in that conversation did you recognize anyone's voice?

THE COURT: He did, he said he recognized his voice. You recognized your voice?

THE WITNESS: Yes. That's what I said.

BY MR. ENDLER:

Q. In referring to the transcript, sir, Page 1, can you tell us what you recognized you were saying? In other words, which participant was you that you recognized your voice as? Was it the "male out" or the male in", in other words?

A. "Male out" was supposedly me, right?

A. I don't follow you, sir.

A. On what I heard?

A. Yes.

A. The "male out". I am the "male out", right? That's what it says here. See, I don't follow.

THE WITNESS: Yes, they made that judgment, right.

THE WITNESS: Yes.

Anthony Castellani for Government, Direct.

THE COURT: The question, I suppose, can be posed in another way. Was the judgment of the person who made the judgment that the "male out" voice was Tony Castellani, was he correct in your opinion?

THE WITNESS: Yes, if he seen me go in there.

BY MR. ENDLER:

Q. No, sir.

A. No, what do you mean?

Q. Sir, here, if I may, on Government's Exhibit 60 --

THE COURT: May I suggest, you know the speaker did not say very much except "Yeah". Why don't you turn to the next page. That is on Page 3. Under this one --

THE WITNESS: Page 3?

MR. ENDLER: Yes, your Honor --

THE COURT: The "male out" voice has a little bit more to say. You listen to that voice and you tell us whether or not in your judgment the "male out" voice is your voice or is not your voice.

Anthony Castellani for Government, Direct.

(Government's Exhibit Number 59,
Call Number 21 as transcribed on Page 3
of Government's Exhibit Number 60 for
identification was then played.)

BY MR. ENDLER:

Q. Sir, were you able to hear that conversation?

A. Yes.

Q. Sir, the person who said "Pittsburgh one and a half, scratch, Citadel nine and a half, Davidson 7, scratch, Dayton is, uh, 2, Marquette", I believe, "is 10, North Carolina is 4, Vanderbilt is 4, Saint Louis is 14", did you hear that on the tape, sir?

A. Yes, I heard it.

Q. Now, do you know, do you recognize the voice of who, if anyone, said that on the tape you just heard?

A. I guess it was me but I don't recognize my own, - it sounds funny. It doesn't sound like me on the phone. Maybe the tape was, - I mean, I have to say "Yes," because I was there.

Q. All right.

A. But I don't know, you know what I mean.

THE COURT: I think most individuals --

THE WITNESS: It doesn't sound like me.

Anthony Castellani for Government, Direct.

THE COURT: Do not get to be an expert on acoustics. I think that is a common situation, Mr. Castellani, that our voice when we hear it played back to us sounds a little bit different.

THE WITNESS: Yes, you know.

THE COURT: The other thing is, ladies and gentlemen, essentially again these are fact questions for you to determine on whether or not the voice heard here and set forth here in the transcript was, in fact, that of Mr. Castellani. All right, Mr. Endler, can we go ahead, please.

BY MR. ENDLER:

Q. Yes, your Honor. Now, Mr. Castellani, directing your attention back to February of 1972, sir?

A. Yes.

Q. I believe yesterday you told us you were also a bookmaker, is that correct?

A. I was a bookmaker then?

Q. In the bookmaking business.

A. Then, yes, yes.

Q. In February '72?

Anthony Castellani for Government, Direct.

A. Yes.

Q. Now, sir, starting at February 1972 and working backwards, - that is going backwards, for how long a period of time, sir, had you been engaged in this bookmaking business of accepting bets or whatever?

A. Myself?

Q. Well, first, yes, yourself.

A. I wasn't.

Q. Okay. Well, could you explain what you mean? You said you were in the bookmaking business?

A. Yes.

Q. Well, if not for yourself, for who?

A. I worked for my father.

Q. And for how long, sir? I mean starting in February.

A. Going back?

Q. Working back.

A. Well, I worked in the store, in his store in Kenmore, the Kenmore News Stand.

Q. I'm talking about the bookmaking business, sir. The bookmaking business from February 1972 working back, how long did you work for your father Steve Castellani in the bookmaking business, in the bookmaking business taking bets?

A. Well, I wasn't working. We weren't working then, going back. You know what I mean, on the phones and that, is

Anthony Castellani for Government, Direct.

that what you mean?

Q. Sir, February 1972.

A. Yes.

Q. You said you were in the bookmaking business.

A. Yes, I was.

Q. And I will phrase my question this way, sir; when did you become a bookmaker, on what date did you start?

A. Well, you see now, I can't give you the date I started but when I acquired the Riverside News Stand, that's when I went on my own, you know, when I started.

Q. Well, sir, prior to February '72, for how long had you been accepting bets for your father?

A. At the Kenmore News Stand, you mean?

Q. Anywhere, Kenmore News Stand, over the phone, anywhere.

A. A couple months, a half a year maybe somewhere around in there.

Q. Six months, sir, at the most?

A. Yes. Well, about that. I can't remember going back that, - most of the time I worked, just worked in the store. Occasionally mine was the night shift, you know.

Q. Could it have been two years, sir?

A. Could have been two years that I worked there?

Q. No, two years prior to February 1972 could it have been approximately two or three years that you were accepting bets for your father.

Anthony Castellani for Government, Direct.

- A. It could have been. Like, you know, if somebody came in, - it wasn't a steady thing, if that's what you mean. When I was there, if somebody came in, if there was nobody to come in, then I wasn't accepting bets.
- Q. All right. Well, when customers came in, though --
- A. Yes.
- Q. You accepted a bet?
- A. Yes, occasionally, yes.
- Q. And, sir, when did you, - prior to February 1972 when did you take bets over the telephone for your father?
- A. When we acquired --
- Q. At 387 Ontario Street, sir?
- A. Yes, that's when I acquired my store.
- Q. If that will help you, can you tell us prior to February '72 when you acquired the Riverside store?
- A. The dates I am not --
- Q. Approximately the year, if you can. I am not looking for the date exactly.
- A. Well, '70, the beginning of '71 or maybe the beginning of '70, no, '71 going into '72, something like that, I think. I don't know what time the deed, the date I acquired it, but I didn't, you know, that was when me and Sammy, you know what I mean.
- Q. You acquired Riverside somewhere around the latter half of '71. Did you go to Ontario Street and accept a wager

Anthony Castellani for Government, Direct.

on the phone for your father before you acquired the
Riverside News Stand in December of '71?

A. Probably, yes.

Q. Did you go in September of '71, sir, beginning of the
football season?

A. Yeah, I think so. No, I don't, - I can't remember.
You know what I mean, you are going back to dates and
everything and I really don't know if I was up there
or I wasn't up there. You know, it's true, that's all.

Q. Were you accepting bets for your father at the Kenmore
News Stand?

A. Yes. Like I said, when a customer would come in at
night, it was slow. There would be customers, one
customer especially would come in.

Q. And Sam Giglia, your partner in the Riverside News Stand --

A. Yes.

Q. He took bets at the Riverside News Stand, I believe you
said yesterday, over the counter?

A. Yes, when he was working there, yeah.

Q. Well, this is back in February '72. I am still referring
to February of '72, sir.

A. When we had the place, right?

Q. Yes.

A. Right, if he was there.

Q. You told us he was no longer there.

Anthony Castellani for Government, Direct.

- A. No. He wanted to go into a different business.
- Q. But in February '72 he took bets at the Riverside News Stand?
- A. Apparently, yes, yes, yeah.
- Q. Well, do you know?
- A. No. I wasn't there though, but I am assuming he took, you know what I mean. I didn't see what he done. I didn't see anybody give him a bet or anything like that.
- Q. Now, who was he working for? Was he working for your father also?
- A. No. He was working for himself.
- Q. Mr. Sam Giglia was always working for himself?
- A. Yes, and me, yes.

MR. ENDLER: Your Honor, I would like to show the witness a copy of Court Exhibit Number 10 and ask you if you would turn to Page 11, sir, of Court Exhibit Number 10.

MR. FAHRINGER: Note my objection to this, your Honor.

THE COURT: Yes. As I understand it, Mr. Castellani, just look at this and read it to yourself for the present.

Anthony Castellani for Government, Direct.

BY MR. ENDLER:

Q. Could you just read this to yourself, please?

THE COURT: Page 10.

MR. ENDLER: I am sorry, your Honor, Page 11,
your Honor.

THE COURT: Page 11.

BY MR. ENDLER:

Q. Have you had an opportunity to read that, sir?

A. Yes.

Q. Does that refresh your recollection as to who, if anyone,
Mr. Sam Giglia was taking bets or at the Riverside
News Stand?

A. Yes.

MR. FAHRINGER: Objected to, if it please your
Honor.

THE COURT: Overruled.

BY MR. ENDLER:

Q. Who, sir?

A. Who was he taking bets for?

Q. Yes.

A. What it says here?

Anthony Castellani for Government, Direct.

Q. Yes, what does it refresh your recollection to as to who Mr. Sam --

THE COURT: Not what it says here, but after reading this, Mr. Castellani, does this refresh your recollection about what occurred back in 1972 about the matter in question?

THE WITNESS: Well, when this question was put to me, my father was sick, you see. Now, it says Sam Giglia always worked there.

THE COURT: Why don't you put that aside. Just put that aside for a minute.

THE WITNESS: Yes, this is confusing me.

THE COURT: Put that aside. Ask a question, Mr. Endler.

BY MR. ENDLER:

Q. Sir, does that what you just read refresh your recollection as to who, if anyone, Sam Giglia was accepting bets for back in February of 1972?

A. Does it refresh my memory? Yes, it refreshes my memory.

Q. Now, sir, who was Mr. Sam Giglia accepting bets for at the Riverside News Stand?

Anthony Castellani for Government, Direct.

A. For himself. I know what it says there.

THE COURT: You have answered it. Just wait
for another question.

BY MR. ENDLER:

Q. Sir, when you testified, sir, that he was accepting
them for Steve Castellani and Richard Giglia and you
said "Yes"?

A. Yes.

Q. Is that wrong, sir?

A. Yes, I did say "Yes".

Q. You said "Yes"?

A. Over here, yes.

MR. FAHRINGER: That is objected to, if it please
your Honor.

THE COURT: One thing at a time. I will
overrule the objection.

THE WITNESS: Yes, I did say "Yes" here.

BY MR. ENDLER:

Q. On January 30, 1973, three and a half years ago, sir --

A. Yes.

Q. You said --

Discussion.

MR. FAHRINGER:

I am going to object to this, your Honor.

THE COURT:

Ladies and gentlemen, it is time for a recess anyway. You go to the jury room, please, and by the way, there is something that I meant to mention last night and I did not. There may be, - during the course of this trial there may be some newspaper account, radio account, TV account, and there may not be, but if there is, do not read it, listen to it or watch it. You should only make up your mind in this case upon what you see or hear here in the courtroom and not from any other source. Spectators stay in their places. The jury may go out with the Marshal. We will let you know when we will be back. There is another matter I have to take care of.

(Jury escorted from the courtroom.)

THE COURT:

I suppose you cannot wait until you read this grand jury testimony, can you,

Discussion.

Mr. Endler?

MR. ENDLER: I am afraid not, your Honor, or at least near his explanation.

THE COURT: Mr. Castellani, do you want to take a break?

THE WITNESS: Yes, a little bit, okay.

THE COURT: Now, Mr. Endler, --

MR. ENDLER: Yes, your Honor.

THE COURT: All right. I thought it might be good so we could have it thrashed out, number one, why should we do this and I want to hear from Mr. Fahringer why we should not.

MR. ENDLER: If I may, your Honor, I believe the reason we should do it is --

THE COURT: You propose to read how much?

MR. ENDLER: Sir, I wasn't proposing to read any. I was proposing on the first hand to simply show passages to the witness to, shall I say, refresh his recollection.

THE COURT: That is commendable except the witness then takes it and he reads it and so we quickly --

MR. ENDLER: Well, your Honor, pages I have --

THE COURT: No, but I mean you say all you want

Discussion.

to do is show it to him to refresh his recollection.

MR. ENDLER:

No, no. I am sorry, your Honor. If the witness continues testifying, I am going to make a motion to start at Page 6, Line 7, read through Page 9, Line 15, resume at Page 10, Line 4.

MR. FAHRINGER:

Can I write this down?

THE COURT:

Wait a minute.

MR. ENDLER:

Page 6, Line 7.

THE COURT:

Down to and including --

MR. ENDLER:

Down to and including Page 9, I believe, Line 15, if I may just quickly check that, your Honor. Page 9, yes, Line 15, and then over on Page 10 starting at Line, - well, it actually starts at the bottom of Page 9, the same sequence. I was going to read straight through Page 14, Line 11.

THE COURT:

You want to read everything?

MR. ENDLER:

Page 6, Line 7 through Page 14, Line 11.

THE COURT:

What is your theory? What it comes to as a practical matter is you want to read from 6, Line 7 to 14, Line 11.

Discussion.

MR. ENDLER: Yes, your Honor, that is correct, but I do not want to read it, your Honor.

THE COURT: Please?

MR. ENDLER: I do not want to read it.

THE COURT: Will you please tell me what you want to do. Do you want to read it or don't you want to read it?

MR. ENDLER: I want to read it if the witness will not testify on direct to what he said in the grand jury.

THE COURT: You cannot hold the witness down to word by word recollection of what he said in the grand jury.

MR. ENDLER: I am not holding him word by word.

THE COURT: Wait a minute. Let me finish my thought here and I will give you a chance. You give him the grand jury testimony and you say "Refresh your recollection". What you should do then is take it away from him and say "Did that refresh your recollection", and "I will ask you some questions". The vice of the present procedure is that you leave it in front of him and then

Discussion.

you ask him a question and then he goes to it and says "Well now, it says here so and so, but let me explain to you there was something else", so actually you are not purposely, I do not think, Mr. Endler, but you are getting around at least permitting Mr. Fahringer to have an opportunity to argue about getting into this second stage. Are we in the second stage yet in your view?

MR. ENDLER: Your Honor, maybe after the recess I will follow the Court's procedure and keep removing the document if I show it to him.

THE COURT: Do you think that, - where in his present testimony, - where is it inconsistent with his grand jury testimony?

MR. ENDLER: Yes, sir, specifically, if I may, and I have it opened to Page 10.

THE COURT: All right. Then --

MR. ENDLER: Sir, can the witness be excused as we discuss his testimony?

THE COURT: Mr. Castellani?

MR. ENDLER: Yes. May he step out into the corridor?

Discussion.

THE COURT:

I think it might help if he is here because I think one problem of Mr. Castellani, and I don't think it is vain. It is not easy to be a witness. I told you that yesterday and I mean it. Mr. Castellani from time to time has said, and I believe honestly, "I don't understand what you are driving at". Let me explain to you some of my difficulties here. At Page 6, Line 7 you say you want to propose that you might have to read that. The question is "Now, at that time you were taking betting action in February while your father was away. Is it correct you would bring the betting action each morning back to the Kenmore News Shop", and he says "Yes". As I recall it, that is what he did say yesterday, "And there you would tabulate it? Yes. And that was with Mr. Giglia, Richard Giglia? Yes.", and he says "Neither Sam nor John nor Silvagna were there", and he said "No". That is what he testified to yesterday. All right. You want to point particularly to

Discussion.

Page 10?

MR. ENDLER:

Well, I had it open there but I can start with Page 6, the page we were on. He said yesterday, I believe, he did not tabulate it, he did it there.

THE COURT:

All right.

MR. ENDLER:

And on Page 7 he now says John Zak was there every morning and he did participate in the calculations.

MR. FAHRINGER:

Your Honor, right on that point may I be heard just a moment?

THE COURT:

Yes.

MR. FAHRINGER:

It seems to me, your Honor, if you look at Page 6, they ask a very specific question about when his father is in Florida and there are two or three questions and answers and he follows that, and then they start going back to the general procedure again and I thought that was explained yesterday that while his dad was in Florida, he did have some contact with the news store, but if you will notice then what happens is the questions become very general. They start talking about, on Page 7, they are

Discussion.

not tying in to that time and I think, your Honor, it gets very confusing.

THE COURT:

At Line 10 on Page 7 he was asked whether or not John Zak participated in the calculations and he said "Yes" and then he immediately is asked whether or not John Zak didn't help you with the bookmaking records in the morning and then he said "No, he didn't help us." and then he was asked about, he said he had his own separate shop.

MR. FAHRINGER:

I think that is what he testified to yesterday, your Honor, to this extent, whether he is talking about his operation or whether he is talking about going over when his father was away and he was helping there.

THE COURT:

Mr. Endler.

MR. ENDLER:

Yes, your Honor. Page 10, your Honor.

THE COURT:

All right.

MR. ENDLER:

If I may, I believe, your Honor, it is part of a conversation but I believe here in this page and maybe the top of the next page Mr. Castellani

Discussion.

testified he got a salary every week from Tony or Richard Giglia, - I am sorry, your Honor, Steve, his father, and specifically said it wasn't a commission, I think, or at least it is my belief he said yesterday "No salary, I got a commission."

THE COURT:

When you go through this, some of it, it may be inconsistent and some of it is the same. We will be in recess for a few minutes and then resume. There is no claim that you are at the point where --

MR. ENDLER:

Not at that stage, no.

THE COURT:

That you should read all of it?

MR. ENDLER:

No.

THE COURT:

Maybe at the break here, Mr. Castellani, I guess you have the grand jury testimony there?

MR. BOREANAZ:

Yes, your Honor.

THE COURT:

Why don't you take a look at it again. Keep in mind that Mr. Endler and Mr. Fahringer want to ask you some questions about it and we will take it up. We will be in recess for a few

Discussion.

minutes.

MR. FAHRINGER: Judge, would you consider my application then for those transcripts?

THE COURT: Is there any reason why we should keep the transcripts on the counter now? Are we going to use them again?

MR. ENDLER: No. At this stage we can put them in the carton, your Honor.

THE COURT: Would you do that?

MR. ENDLER: Before the jury comes back.

MR. FAHRINGER: Thank you very much, Judge.

(Recess taken at 11:30 a.m.)

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Anthony Castellani for Government, Direct.

PROCEEDINGS: After recess, 11:48 a.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury present.)

ANTHONY CASTELLANI, a witness called by and in behalf of the Government, having been previously duly sworn, resumed the witness stand and testified further as follows:

DIRECT EXAMINATION BY MR. ENDLER (RESUMED):

MR. ENDLER: May I continue, your Honor?

THE COURT: Certainly.

BY MR. ENDLER:

Q Mr. Castellani, prior to the break or recess I believe I asked you if you had had an opportunity to read this I held up, a certain part, have you had that opportunity, sir?

A Yes, I read it, yes.

Q And did that refresh your recollection, sir, as to Mr. Sam Giglia?

A Yes, yes.

Q Sir, I would ask you then, could you tell us who, if anyone, Mr. Sam Giglia was accepting bets for or wagers for at the Riverside News Stand back in February of 1972?

Anthony Castellani for Government, Direct.

A He was accepting them for himself and for me.

Q Sir, I believe that you testified that you were accepting bets at the Kenmore News Stand for your father at one time?

A At one time, yes.

Q And prior to February of 1972, can you tell us approximately, and I am not looking for any specific date, sir, approximately how long you were accepting bets for your father, Steve Castellani, that is?

A Well, a year or two. You know, it varies like.

Q Sir, now you have explained to us yesterday and today what "scratch" means, what "a pick" is, various other terms. Sir, could you tell us where, if anywhere, or from whom, if anyone, you learned your information about the bookmaking business?

MR. FAHRINGER: That is objected to, if the Court please, hearsay.

THE COURT: Overruled.

THE WITNESS: Where I learned all this information from?

BY MR. ENDLER:

Q Yes.

A It just comes through being on the streets, sir. There isn't one particular person to show you. I am a better

Anthony Castellani for Government, Direct.

also so you pick these up from other people who are in this business, not just one person.

Q Well, when you worked for your father accepting bets for your father back in '72 and the year prior thereto, did he teach you anything about how to run a bookmaking business or what to do?

A He would tell me when I done something wrong and that's when I would learn but he wouldn't sit down with me or anything like that.

Q In other words, if you made a mistake, he would instruct you on the proper method of how to handle it the next time?

A Well, yes. Could I give you an example?

Q Give us the example.

A Well, say when I was in the store and there were a lot of people that make a living like this. I want to explain to you, it is called past posting on a horse and this is one thing my father kept harping on me with, you know, if a person keeps winning, "Is he past posting you", and this means the race already had run and when I would take a slip with the money it would be like a reverse bet. It would only be a ten if come ten, ten if come twenty, which means he gives you \$20, but the figures are reversed and it means he has got \$30 bet on each horse so it is a very dangerous bet but you don't

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realize it so he puts in a winner already and you have to put a time down on a slip so when I didn't do that, back them, this is when he would holler at me and this is when you learn, "He past posted you". I know he can't, you know, go like that to him, and he would yell at me and he would pay them off and then I put the time on and the person didn't win as often then.

Q Referring, sir, to the term you use, "past posting", can you explain to us exactly what the term "past posting" means?

A "Past posting" means like, - I don't know, - what you call it, - it means the race already ran and they have the winner and they bring it in to you.

Q In other words, sir, the bettor knows the result from the race?

A He knows the result, he knows the winner.

Q And he calls you and says "I want to place a bet on such and such a horse"?

A Yes. It does work faster over the phone. That's why you really got to be on the ball or you can really wind up in the poor house.

Q Now, sir, I believe you said approximately December of '71 you acquired the Riverside News Stand with Sam Giglia, is that correct?

A Right, yes.

Anthony Castellani for Government, Direct.

Q And I believe you said, - was it about that time you and Sam Giglia began your own bookmaking operation?

A Yes, yes.

Q You and Mr. Giglia?

A Me and Sam Giglia, yes.

Q And you, for a lack of a better term, did you leave your father's business and no longer accept bets for him, sir?

A Right. I was working for myself now.

Q Okay. After December of '71, when you acquired the Riverside News Stand, were there occasions, sir, in December of '71, January of '72 and February when you would, in fact, accept bets for your father or from your father's customers?

MR. FAHRINGER: I am going to object to that because the witness never said he could tell when he started, December, January, February.

THE COURT: Overruled.

THE WITNESS: Will you repeat the question?

BY MR. ENDLER:

Q After you acquired the Riverside News Stand with Sam Giglia - -

A Yes.

Q And you said you two began your own bookmaking business?

Anthony Castellani for Government, Direct.

A Yes.

Q After you did that, did you still continue to accept bets or wagers for your father or from your father's customers?

A Only on the phone like, you know, "Number 20", are you going back to?

Q Now, are you referring to the phone at Ontario Street?

A Yes.

Q Now, sir, that phone located at 387 Ontario Street, was that phone part of your business or part of your father's business?

A It was mostly my father's business because as I says, I only had two or three customers calling me on the phone.

Q So that, sir, the bets that you accepted on the phone at Ontario Street - -

A Yes.

Q You were accepting for your father?

A Sometimes, yes, if it was his customer, yes.

Q Well, showing you Government's Exhibit Number 60, do you remember, sir, whether a person "Paul", just "Paul", do you remember whether he was your customer or your father's?

A Yes, I remember this "Paul", yes.

Q Do you remember whose customer, if anyone? In other

Anthony Castellani for Government, Direct.

words, was he yours or your father's?

A He was, - he, I think he was my customer, but I couldn't handle him. He was too lucky, I mean.

Q Could you explain when you say "He was too lucky, I couldn't handle him", what do you mean by that, sir?

A Well, this guy, no matter what game he would bet, even if you moved the line up and down, he would win it, you know, he was just too lucky.

THE COURT: You said you couldn't handle it.

What would you do if he called in a bet?

THE WITNESS: Well, it would be an agreement with my father that he had half the action, whatever this kid called in.

BY MR. ENDLER:

Q Sir, are you familiar with the term or do you know of a term called "laying off"?

A Yes, that's what this is.

Q Could you explain to us what you understand the term "laying off" to mean?

A "Layoff" means when you get overloaded on one game, this is dangerous, you know, to you businesswise. If one customer comes in, says "Give me a dollar", which is a hundred, and another customer says "Give me two dollars", and then all of a sudden \$5 and they are all going on

Anthony Castellani for Government, Direct.

Dallas, let's say, this is when you reach out. You make a call to my father to get in touch with him, tell him "move money", so he reaches out and he moves out to his contacts so you do not get buried with one game. You know, no matter if you move the line, they keep coming in on Dallas because maybe they got the word that the other team they are playing, the other quarterback is hurt, you know, and you are sitting there and you don't know this and maybe this, the last minute, came over the television or Stan Barren says, you know, "Joe Namath isn't playing", and then all of a sudden the team that they are playing, everybody switches and you got the line in front of you now and they are in the inside and you don't have the radio on or nothing and they catch it before you do and this is right away where you know something is wrong and you make a phone call to get in touch with my father and lay off.

Q Excuse me. In other words, sir, if, on a particular night, you receive too many bets on one team, you would transfer some of those bets to your father, is that correct?

A Well, yes. It would be an agreement between father and son on certain customers like that's the advantage we had because he could trust me, you know, if you understand what I mean.

Q In other words, sir, you might take a bet from "Paul"?

Anthony Castellani for Government, Direct.

A Yes.

Q But if you lost, your father would pay?

A Half.

Q Half?

A Yes.

Q And you would pay half?

A Yes, depending on sometimes I would tell him, "No, I held it all, I kept it all because I had a feeling that this guy had to lose", but he never did.

Q So sometimes you would lay off half the bet and sometimes you wouldn't?

A Yes, I would sit on it, yes.

Q What if this man "Paul" won, would your father have to pay half of the winnings?

A Yes, at the end of the week.

Q What if he lost, would you and your father split?

A Yes. Say "Paul" lost. Say he lost five hundred, we would both get two fifty, but then that breaks down.

Q So if he won or lost you and your father would split the winnings or losings?

A Yes, but he never lost.

Q Now, sir, "Art", are you familiar with a bettor or were you in '72, with a bettor named "Art", A-r-t?

A "Art"?

Q Yes.

Anthony Castellani for Government, Direct.

A. That's a customer of my father's.

Q. So in other words, on that occasion, you were taking wagering activity for your father?

A. Yes.

Q. What about a customer named "J.S." or "JS", can you remember that customer, sir?

A. Not that good, but - -

Q. Was he one of your customers?

A. No, no.

Q. One of your father's?

A. Yes.

Q. So you took this bet from "JS" for your father?

A. Yes.

Q. Sir, what about "Number 20"? Do you remember a bettor named "Number 20"?

A. I don't remember. This comes up in the transcript but I don't remember this man. I mean "Number 20", I don't even, - he shows up so much.

Q. Well, was he one of your two or three bettors that called in over the phone?

A. No. This "Number 20", no, he wasn't because I don't remember. I can't distinguish this guy.

Q. If you took action from him it would be for your father?

A. Most likely, yes, mainly, yes.

Q. Do you remember a bettor "1,2,3", someone would call in

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"This is 1,2,3"?

A I don't know.

Q Was he one of your bettors?

A No. That was my father.

Q That was your father?

A Yes.

Q So you were taking Mr. "1,2,3's" bet for your father?

A Right.

Q What about Mr. "Stogey" or "Stogey", was he one of your customers, sir?

A No.

Q One of your father's?

A One of my father's, yes.

Q So any bets you took from Mr. "Stogey" were for your father?

A Right.

Q Now, these people I have mentioned that you took bets for for your father - -

A Yes.

Q Mr. "Stogey, 1,2,3", did they place not only horse bets but sport bets with you, basketball and football games?

A Well, some customers, they don't like horses, like you mentioned "Stogey". Well, he used to go both ways, maybe a little horses, a little heavier on the sports, maybe, because he knew more about it probably.

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Q Well, what I'm asking you, sir, when you worked the telephone at Ontario Street, 387, did you not only take horse race bets but also sports bets for your father?

A Yes.

Q You took them both?

A Both, yes.

Q And in your operation, you and Mr. Sam Giglia's, did you take both horse and sports bets?

A Yes.

Q Now, I think you previously described to us earlier, what you do when a person places a bet. Sir, on those occasions, when, - well, when Mr. "Stogey" called in to give you a bet for your father - -

A Yes.

Q Would you keep that on a separate slip of paper from the people who called to place a bet who were your customers?

A Was it separate?

Q Yes, would you make a distinction as to whether it was your customer or your father's, - how would you do that?

A It would be one sheet, sir, like I know my customers, like it is easy.

Q Every night you had one sheet?

A Right.

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Q For your father's name and yours?

A Right. No, everything was on one sheet.

Q That's what I mean, the bottom sheet?

A I forgot. Here's what I used to do, I think. Sometimes I would draw a line down the center of this paper that I was writing on and these customers would be my father's and the few, if they called, would be here, but mostly it was, like I said, helping out my father, you know.

Q In other words, except for two or three, most of the bets were your father's?

A Oh, yes. He was an established man in the business.

Q Now, sir, at the end of this evening, after you no longer accepted any bets on Ontario Street, what did you do with the bets you accepted for your father? In other words, the sheet you have in front of you saying "Stogey bet a hundred; Number 1,2,3, bet fifty", what would you do with that piece of paper that night?

A That night? Well, I would check that out myself, remembering back now. Now you hit a spot. I used to do that myself. The sports were easy but when the parlays came in with the horses, there is not very few people who can figure parlays and round robins. You have to have a knowledge of it. That's when I would consult with my father for the round robins.

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Q No, this sheet that you have - -

A Yes.

Q It is Thursday night. You have just closed down the phone, no more bets. What do you do with that sheet?

A That sheet, I put it in my back pocket and I go back to the store with it.

Q Riverside or Kenmore?

A Riverside.

Q Now, when, if ever, do you go to your father and say "Steve" or "Father, here are the bets I accepted for you last night"?

A When? It would be at the end of the week.

Q That is fine, so once a week you would tell your father what customers of his had called you?

A No. He would know already and don't forget, he worked during the day.

Q When would you tell your father what bets you accepted from his customers?

A When? I would tell him during the day most likely.

Q So in other words, if last night, Wednesday night, you had accepted five bets from Mr. "Stogey, JS, 1,2,3, Number 20" and "Coz", this morning, you would go tell your father "here are the five bets I got last night"?

A No. Maybe in the afternoon like I might call him or maybe I wouldn't call him, you say. Like I says, I was

Anthony Castellani for Government, Direct.

his son and he trusted me. Whatever I says the guy had coming, he would have coming, like, you know, I wouldn't write down a figure, you know what I mean.

Q Now, sir, on occasions back in 1972, - well, first of all, this bookmaking business of your father's?

A Yes.

Q That you were taking bets for at Ontario Street and before at the counter at the Kenmore News Stand?

A Right.

Q Now, I am not talking about you. Who owned that book-making operation?

A At Kenmore?

Q Yes.

A That was my cousin Dicky, Dicky Giglia.

Q Richard Giglia?

A Richard Giglia and Steve, my father, Steve Castellani.

Q Now, can you tell us if you know, who owned what, what the split was, if any, who owned how much, was it equal partners?

A Equal partners, yes.

Q Now, in other words, when you were taking bets on Ontario Street, you were working for your father and Dicky Giglia?

A No, no. There is a discrepancy. I know what you are getting at, sir. You know, it says - -

Q Please, sir, either you were or you were not working - -

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THE COURT:

Excuse me, Mr. Endler. We have gone over this and I think it is up to the jury to make that determination from all of the evidence in the case. We have gone through this with Mr. Castellani before and I think you have to look at the facts of the history, the relationship, the patterns, conversations, all of it, to make that determination. Next question, please.

BY MR. ENDLER:

Q Yes, your Honor. While you were at Ontario Street, accepting wagers over the phone - -

A No. Oh, I am sorry, Ontario Street, yes.

Q The apartment on Ontario Street?

A Yes.

Q Did Richard Giglia or Dicky Giglia, did he also, on occasion, help you, come up and help you accept bets?

A He came up there when my father was away or got sick.

Q During February of 1972, did your father have occasion to go to Florida for about a week vacation?

A Yes. He left around then.

Q While he was down there he got sick or something?

A Yes, he got very sick, yes.

Anthony Castellani for Government, Direct.

- Q He was in the hospital down there in Florida?
- A Yes. He almost died, yes.
- Q Now, while he was away, - your father, down in Florida, did you assume a more active role in your father's operation?
- A Yes. I took his place.
- Q You became what, partners with Richy Giglia or you took over your father's business?
- A No. I took over his action. What money he won, I handled then. I took his place.
- Q Your father?
- A Yes.
- Q So while your father was away, you were getting half the profits or what have you from the Kenmore News Stand operation?
- A No, I wasn't, - it wasn't going in my pocket. I would just take the money.
- Q Yes?
- A And put it aside and then when my father came home if there was any money left from the, you know, from the receipts of this business, the day's receipts, I would give him, but from my recollection, I didn't have any money. We lost it. We lost. See, we had a bad couple of weeks when he was gone so I had to come up with money.
- Q Now, you mentioned to us a bettor named "Paul" on occasion

Anthony Castellani for Government, Direct.

was very lucky and you would lay off his bets to your father, is that correct?

A Yes.

Q Did you on any other occasion, other than "Paul" lay off any action to your father?

A No, because we weren't that, - we didn't have that much business, you know what I mean. What came in, I sat on and my father sat on his and but if we had a customer like Paul that was dangerous, you know, we would split it up.

Q Now, sir, I believe you earlier told us on occasion when the line wouldn't come in, you would call your father?

A Yes.

Q And ask him if the line you were going to draw was okay?

A Yes, but I wouldn't call him from the office.

Q From wherever, but you would call him from some location?

A Yes. I would have somebody contact him and they would tell him and they would relay the message to me, yes.

Q Now, you said you would get in contact with him somehow?

A Yes.

Q To check with your father to see, - if you hadn't got the line to see if the line you were going to draw up was okay?

A Yes, because that was mostly his customers and I didn't

Anthony Castellani for Government, Direct.

want to get hollered at for putting up a wrong number and he would turn around and say "You have the wrong number, you shouldn't have done this", and so to avoid these arguments I would do that.

Q So in other words, with respect to your father's customers, - -

A Right.

Q You always checked with your father before taking any decisive action like making a line?

A Yes.

Q Now, when he was away in Florida or any other time where he might have gone out of the city - -

A Yes.

Q Who would you check with on that occasion, if anyone, or would you check with no one?

A When he was away, the line would come in and then it was up to me.

Q No, sir. If the line didn't come in and your father could not be reached, he was in Florida or somewhere else?

A Yes.

Q Would you check with anyone on that occasion to see, you know, with respect to your father's customers what the line should be or if it was all right?

A Well, yes, I know.

Q But who would you check with?

Anthony Castellani for Government, Direct.

A I would check with the guide I have in front of me.

Q Well - -

A Well, you know, I have another line written in.

Q When your father was in town, though?

A Yes.

Q You didn't get the line, you would check with him before you made one up?

A Right.

Q Who did you check with when your father was not in town, he was away, couldn't be reached for some reason?

A Right.

Q In other words, on his customers, if you didn't get the line, who would you check with?

A Well, I would, - a customer would call me like and I would tell him "Get so and so's line", you know what I mean, and then they would come back in and then I would put it down.

Q In other words - -

A Am I answering your question?

Q No. In other words, you would check with no one?

A When he was away I was like him, so it was up to me. It was my, - I was running my business. Now, you understand, my father's. In other words, I took his place. I didn't need, - if I made the mistake, then when he came home he would holler at me but if I didn't make any

Anthony Castellani for Government, Direct.

mistakes, I would take sole charge.

Q While he was away, you didn't check with anybody?

A No. I didn't have to.

Q And while your father was away, how did you and Richard Giglia divide up the profits, if any, from the gambling business, your father's now, when he was away in Florida, how did you and Richard Giglia divide it up?

MR. FAHRINGER: I object, your Honor. He indicated that was wrong.

THE COURT: I will overrule it. It is up to the jury.

THE WITNESS: How did we divide up the profits?

BY MR. ENDLER:

Q Yes.

A Well, they went 50/50.

Q So you got fifty for your father and Richy Giglia got fifty?

A If there was anything to divide up, you know.

Q If there were profits?

A Yes, if there was.

Q Well, sir, when your father was away and you had assumed his half interest in his organization or operation, excuse me, other than you and Mr. Giglia, Richard Giglia, did you have any other persons in your father's employ

Anthony Castellani for Government, Direct

in his gambling operation that you were now taking care of or responsible for in your father's absence?

A Did we have anybody else?

Q Other than you and Mr. Giglia. Do you understand my question?

A Not really.

Q Okay. Do we have other workers?

Q During that week your father was in Florida - -

A Yes.

Q Or whatever?

A Yes.

Q And you took over his operation while he was away?

A Right.

Q And you and Richard Giglia were 50/50 partners, right?

A Right.

Q Now, your father is away. Other than yourself and Richard Giglia - -

A Right.

Q Were there any other persons, referring to the bookmaking operation - -

A Yes.

Q Beside yourself and Richard Giglia?

A No sir, absolutely not, to divide up the profits, you are talking about, is that what you mean?

Q Well, let's forget about dividing up the profits. Was

Anthony Castellani for Government, Direct.

there anyone else, any other person besides yourself and Richard Giglia working, - wait a minute now, let me finish my question - -

A Okay.

Q In the gambling operation, not as a partner, just working, someone who would accept bets for you, someone who is also working telephones, someone else taking bets over the counters?

A Well, I assume - -

Q No, sir.

MR. FAHRINGER: I object to what he assumes, your Honor.

THE COURT: Strike "assume" . Can you put the question again, please?

MR. ENDLER: Yes, sir.

THE COURT: What we want is your best recollection, your best judgment, not your assumption.

THE WITNESS: All right.

THE COURT: Listen to Mr. Endler's question, Mr. Castellani.

BY MR. ENDLER:

Q During the week your father was away and you and Richard Giglia were managing your father's gambling operation - -

A Yes.

Anthony Castellani for Government, Direct.

Q Okay, you were partners. Other than yourself and Richard Giglia, forgetting about you two for the minute, were there any other people or individuals that were also working for your father's, now, gambling operation, whether they were accepting wagers over the phones or accepting wagers at the store over the counter, other than you and Richard Giglia, for your father?

A For my father?

Q Well, for your father's gambling business or bookmaking business?

A Well, John Zak used to be there to accept bets.

Q Now, this Mr. Zak, could you tell us - -

A When we went to lunch. When Dicky went to lunch I told you yesterday.

Q Now, what exactly did John Zak do for your father's operation?

A John Zak, like I says, he was a retired man. He had emphysema. He couldn't do a great deal of heavy work and the man was so bored so he would come in the store and he would arrange the books and that's how my father caught on to him, you know, my father was busy doing something else, figuring bets or trying to make up a line for the night and that's when John Zak would help out like, is that what you meant?

Q Yes. If you could now just explain a little bit more.

Anthony Castellani for Government, Direct.

When you say "help out" exactly what did Zak do?

A. Oh, yeah. John Zak took care of Kenmore News Stand's slips.

Q. Well, could you maybe tell the ladies and gentlemen "slips", what do you mean?

A. Well, a "slip" is the piece of paper that the gentleman or the woman brought into the store for her bet, like a \$2 double at, let's say, Buffalo Raceway and he would pick it up at the end of the day and maybe a certain time he would come, I don't know, and he would take it to his house and put the radio on and listen to the results for the night daily double and I assume, would get the Courier like I done it the same way, you know, the same way. That was his job.

Q. Okay. After he did this, after he listened to the radio, got the results of the horseraces or checked the Courier, what would he do with those slips he had at home?

A. With the slips at home?

Q. You told us he brought them home.

A. I don't know. He brought them home, right? I don't know what he done with them at home.

Q. When he was done with them, did he bring them back to the store?

A. No, I don't think so, no, he couldn't have. It would be his slips at home.

Anthony Castellani for Government, Direct.

Q Did he keep the slips?

A Yes.

Q Well, those slips showing who had bet money, there was some winners and losers?

A Right.

Q Was Mr. Zak responsible for paying them off?

A No.

Q Well, you and Richy Giglia were the owners of this operation?

A Wait a minute, wait a minute, me and Richy - -

MR. FAHRINGER: That is objected to.

THE COURT: Will you stop using words like "owners, operators, managers". That is for the jury to determine. If someone won, one of your customers won, Mr. Castellani, eventually some money would be paid. How would the money be paid?

THE WITNESS: He would come to the Kenmore News Stand. It would depend on, you know, which customer. He didn't say what place he went to.

THE COURT: Let us take one of your own customers.

THE WITNESS: That's easy. He would come to the Riverside News Stand and I would pay him personally or Sammy would pay him. That's

Anthony Castellani for Government, Direct.

a fact.

THE COURT: What would happen if one of your customers lost and he owed you some money, then what would happen?

THE WITNESS: Well, sir, we had the money, so he lost.

THE COURT: He lost.

THE WITNESS: He had the money, that's it.

THE COURT: That is what I was asking.

THE WITNESS: I would have the money he lost and that's it.

THE COURT: How would you get the money in the first place?

THE WITNESS: He would hand it to me, to me or to Sammy mostly because Sammy was at Riverside.

THE COURT: People call you on the telephone, no money came in then, right?

THE WITNESS: Right.

THE COURT: Some people would call maybe two or three times a week or some more.

THE WITNESS: Yes.

THE COURT: And you would carry this along and then you would have a settlement day?

THE WITNESS: Right, your Honor.

Anthony Castellani for Government, Direct.

THE COURT: Your customers you say, would come to your place?

THE WITNESS: Yes.

THE COURT: All right. What about these other people that you were telling us about that you were taking care of for your father, what would they do?

THE WITNESS: They would go to Kenmore News Stand.

THE COURT: How would the people at the Kenmore News Stand know what to do when they got there?

THE WITNESS: How would they know what to do?

THE COURT: Right.

THE WITNESS: Well, Dicky was there to take care of his business and my father's.

THE COURT: How would the information get to him?

THE WITNESS: Through John Zak.

THE COURT: Go ahead, Mr. Endler.

BY MR. ENDLER:

Q Thank you. Do you also remember an individual named Sarge Sapienza or Sarge?

A Yes, right, I know him.

Q I'm referring once again back to this period in '72, sir.

A Yes.

Anthony Castellani for Government, Direct.

Q Did he work or have a job around the Kenmore News Stand?

A Yes.

Q Sir, now, with particular to the bookmaking business, did he have a job with respect to the bookmaking business?

A Well - -

Q This Sarge, I am talking about.

A Sarge?

Q Yes.

A See, I don't know. I know he worked, you know, behind the till and that, but I don't know what he done when he was there. You know, he was getting paid, I guess, I assume, you know, for working at the store, like collecting for the Couriers, the candy, the books and so forth.

Q With respect to the bookmaking operation, sir, do you know whether or not Sarge, this person I have referred to as Sarge Sapienza, was accepting bets over the counter at the Kenmore News Stand?

MR. FAHRINGER: Could we have some time on that, if your Honor please?

THE COURT: The time is important.

BY MR. ENDLER:

Q Yes. Back in February of 1972, sir, do you know whether or not this Sarge Sapienza was accepting bets or wagers

Anthony Castellani for Government, Direct.

or slips over the counter at the Kenmore News Stand?

A Do I know? Well, I took it for granted he was, but I never seen him.

MR. FAHRINGER: Your Honor, I object.

THE COURT: Strike "took it for granted", and of course, the rest of the answer may remain.

BY MR. ENDLER:

Q Now, sir, back in February '72, so we are back again, were you familiar with a Joseph Sivagnia or Silvagna?

A Yes.

Q What is the correct pronunciation of his name? Is it Silvagnia or Silvagna or another one?

A I couldn't tell you the right pronunciation, the right way to say it.

Q What did you call him?

A What did I call him? I called him "little man". I mean that's what I call him. I mean you asked me.

Q This Mr. Joseph Silvagnia or Silvagna - -

A Yes.

Q Back in February of 1972, was he working at the Kenmore News Stand, sir?

A Was he working?

Q Yes, sir.

Anthony Castellani for Government, Direct.

A He hung around there. He wasn't, - indirectly he would be there, you know, like I tried to explain yesterday. You know, he didn't have a certain job. He was just, - he just hung around.

Q With respect though, to the bookmaking business at the Kenmore News Stand.

A Yes.

Q In February of 1972, sir, did Mr. Silvagnia or Silvagna, this Joseph, did he accept bets or wagers or slips over the counter at the Kenmore News Stand in February of 1972, sir?

A I assume he did but then again, I never seen him.

MR. FAHRINGER: I object to what he assumes, your Honor.

THE COURT: All right. Strike "assume".

BY MR. ENDLER:

Q Now I would like to show the witness Court Exhibit Number 10 and I am showing the witness the bottom half of Page 11, Line 23, going over to Page 12. Would you just read this to yourself, sir, starting right here on Line 23?

A Yes.

Q Read it to yourself.

MR. FAHRINGER: Your Honor - -

Anthony Castellani for Government, Direct.

THE COURT: Just let the witness read. All right, Mr. Fahringer, there is something?

MR. FAHRINGER: Yes. My objection is it doesn't specify February of 1972, your Honor.

MR. ENDLER: Your Honor, for the record, I had the witness read down to Line 16 on Page 12.

THE COURT: All right. Go ahead, Mr. Endler.

BY MR. ENDLER:

Q Have you had an opportunity to read this?

A Yes, sir.

Q Does that help to refresh your recollection?

A Yes.

Q Now, once again, sir, as with Mr. Sarge Sapienza, Mr. Joseph Silvagnia or Silvagna and Mr. Zak, sir, can you tell us now whether or not those three individuals accepted bets, wagers or slips or anyone or all three, and if I am, - over the counter or at the Kenmore News Stand?

MR. FAHRINGER: Your Honor, I asked that a time be fixed because time is relevant.

THE COURT: He just referred to the time. This is in February of '72?

MR. ENDLER: And prior thereto, sir.

THE COURT: What is the date there?

Anthony Castellani for Government, Direct.

MR. ENDLER: Well, your Honor - -

THE COURT: In December of 1971?

MR. ENDLER: No, your Honor. If I may, the time period that was referred to, I believe, on Page 12, Lines 14 through 16, which I had the witness read - -

THE COURT: From 1970 through early 1972. That is the time period we are involved with. Did these men take bets over the counter during that time?

THE WITNESS: Well, I wasn't there. See, I had my own operation. I assumed, like I said, I don't know if they did or didn't.

MR. FAHRINGER: Again, your Honor - -

THE COURT: Strike "assume".

THE WITNESS: I never see them.

BY MR. ENDLER:

Q Wait a minute. From 1970 through early 1972, - well, strike that. Prior to December of 1971, sir, when you bought Riverside News Stand, didn't you tell us you worked for your father accepting bets at the Kenmore News Stand?

A Yes. I skipped out on my other job, yes, at night.

Q Before you moved over to Riverside at the time, I believe

Anthony Castellani for Government, Direct.

you said was December '71, from 1970, sir, until December of '71, during that time period, did Mr. Silvagnia or Silvagna, Mr. Zak and this Sarge Sapienza, did they accept bets or slips or wagers at the Kenmore News Stand?

A Back when, before '70?

Q No, from 1970 - -

A Yes.

Q And up until approximately December of '71 when you left to go buy the Riverside News Stand?

A Yes, yes.

Q During that time period?

A Did they accept bets?

Q These three people, did they accept bets or wagers or slips at the Kenmore News Stand?

A Then again, I don't know. I am just, you know, at I mean, like I wasn't there.

Q Fine, sir.

THE COURT: All right. Next question, please.

BY MR. ENDLER:

Q Do you, of your own personal knowledge, know, sir, whether these three individuals I have just mentioned, Mr. Sapienza, Mr. Zak, Mr. Silvagnia, whether they worked for your father and Mr. Giglia in that bookmaking

Anthony Castellani for Government, Direct.

business?

MR. FAHRINGER: That calls for a conclusion, your Honor, and it has been asked previously.

THE COURT: Right. I will sustain the objection to that question.

BY MR. ENDLER:

Q Now, sir, other than the apartment at Ontario Street, are you, - were you, back in 1972, February of 1972, familiar with a telephone that was located at an apartment at 476 Terrace Boulevard in Depew, Telephone Number 681-2509?

A Only if my father wasn't there. If my father was away, then I was there.

Q Sir - -

THE COURT: You say "only if my father wasn't there"?

THE WITNESS: Right.

THE COURT: Do you mean - -

THE WITNESS: If he got sick.

THE COURT: If he was not there, then you were familiar with it?

THE WITNESS: Oh, yes, yes sir.

Anthony Castellani for Government, Direct.

BY MR. ENDLER:

Q And when your father wasn't there, did you have occasion, back in 1972, February, to go to 476 Terrace Boulevard?

A To go there?

Q Yes.

A I had to, yes.

Q Actually enter the premises?

A Yes.

Q And, sir, when your father was away and you went to 476 Terrace Boulevard, what did you do there?

A I accepted mostly horse racing.

Q Horse action?

A Yes, over the phone.

Q In other words, bets on horse racing?

A Horse races, yes.

Q Now, were these customers or people you were accepting bets from at 476 Terrace Boulevard, were they yours or your father's?

A Mostly my father's.

Q Now, and you say you only went there when your father wasn't there?

A Yes, that's the truth, sir yes.

Q Now, how, - would he call you and tell you he couldn't make it or how would you know to go there?

A Well, it would be simple. The only time I went there,

Anthony Castellani for Government Direct.

like I says, if he was going on vacation and I would know he was going away, so I would know I was supposed to go there.

Q Now, sir, back to Ontario Street, during the course of the average evening, back in February, 1972, can you tell us, sir, approximately how many people, on the average night, would call and place a bet with you, both for your operation or your gambling business and for your father? In other words, both combined?

A Combined?

MR. FAHRINGER: I will object to that.

THE COURT: Overruled.

THE WITNESS: Well, I can't pinpoint exactly, you know.

BY MR. ENDLER:

Q Approximately.

A Approximately? Well, maybe 10 or 15, in between there. 15 would be a busy night, I would say. It wasn't that busy, you know.

Q 15 on the average?

A Well, on the average, 10, let's say. You know, a busy night I said 15.

Q And in February of 1972, while you were at the telephone at Ontario Street, sir, can you tell us during the course

Anthony Castellani for Government, Direct.

of the average evening, what was the average amount of bets or wagers that you accepted on the telephone for both yourself and for your father?

MR. FAHRINGER: Excuse me, your Honor, just a moment.

I object to this on the ground of relevancy.

THE COURT: Overruled.

THE WITNESS: Repeat that.

BY MR. ENDLER:

Q I am sorry. Back in February of '72 - -

A The amount of money?

Q The average amount you would accept on the telephone, bets for both yourself and for your father, your father's customers?

A Yes, all right. An average, it would be - -

Q Approximately?

A Well, it varied on the customer now.

Q Was there - -

A All right. It has got to be a hundred and fifty to two hundred some nights, you know, and then some nights it would be higher because of that one guy would call.

Q Using the best of your recollection, sir, what is the highest amount back in February of '72 of wagers for both yourself and your father, that you can remember at this time accepting over the telephone?

Anthony Castellani for Government, Direct.

A That I can remember accepting. Well, at night, this is what you mean? Yes, at night. The highest amount, six, seven hundred.

Q Now, sir, I believe you qualified that by saying "at night". Let me qualify it by saying during the day from morning until midnight?

A I wouldn't know.

Q No, I am talking about you yourself, just you, how much you accepted for yourself and for your father?

A Myself and my father?

Q Any bets you took for your father?

A Well, everything was, you know, separate like, you know, not all for me. A couple hundred. You know, you are starting to confuse me a little bit, sir. I am sorry.

Q Maybe I can do it this way. In February of 1972, sir, what is the highest amount of money, of wagers I am referring to, that you ever accepted during a single day, both on the telephone and at the News Stand for both yourself - -

A Yes.

Q And for your father? In other words, bets that you accepted for your father, from your father's customers, an approximate total figure during the course of one day, the highest that you can remember.

A About seven, eight hundred. Is that good enough, around

Anthony Castellani for Government, Direct.

there, the highest?

Q Is that the best of your recollection?

A Yes, the best I can remember, you know, going back.

Q Can you tell us, sir, to the best of your recollection back in February of '72, I am still referring to, what was the highest single bet? In other words, one person's wager, one telephone call that you can remember at this time?

A That had to be "Paul".

Q Can you tell us, using your recollection?

A About five fifty.

Q \$550?

A Yes.

Q Sir, directing your attention to February 26, 1972, were you using the telephone at Ontario Street?

A Was I using it?

Q Yes. In other words, when I say "using it", to accept bets?

A Yes, all right. You said a certain date and I don't know if I was there, you know.

Q Sir, at 7:09 p.m. did you accept a bet from "Paul" for \$2,200?

A For \$2,200?

Q Yes, a bet from "Paul", this person you have referred to as "Paul".

Anthony Castellani for Government, Direct.

A One bet?

Q One bet. Well, four bets during one telephone call for a total of \$2,200?

A Yes.

Q Okay. Then maybe my question was phrased wrong, sir. During one phone call, what is the total amount not of one bet but a bettor might have had a bet on eight games, so what is the total amount that one bettor on all his games, all his bets, bet with you at a single time?

A Well, that was the highest.

Q "Paul's" \$2,200?

A Sure, because I explained to you he was the luckiest one of them all and we was afraid of him. You know, in the time that, and it so happened, we were unlucky, you had the taps on or otherwise it was nothing like that, that kind of business, that type of business, but you won't believe that.

Q Sir, can you tell us back, and once again I'm still referring to February of 1972, the total number of customers or bettors, whatever you want to call them. that you knew? In other words, that you had knowledge of that both your business, your bookmaking business and your father's bookmaking business had? In other words, the total bettors for both?

A The total bettors for both?

Anthony Castellani for Government, Direct.

Q No.

A I couldn't tell you that.

Q The total number that you knew about.

A Well, I knew my own, right, so that was like ten there.

Q Okay, ten that walked in?

A Yes.

Q And two over the phone?

A Three, it could have been if I got lucky, yes.

Q That is thirteen, and how many did you know about that your father had, how many did you accept?

A Over the phone?

Q Or at the Kenmore News Stand?

A See, that I didn't know. I can't get into that.

Q How many over the phone did you know about?

A There had to be like ten, you know, like to fifteen, that might have called.

Q That might have called?

A Like that, yes.

Q So then between you and your father, there were approximately twenty-eight?

A Give or take, yes.

Q Approximately, give or take some?

A Yes.

Q Now - -

A That I knew of, now.

Anthony Castellani for Government, Direct.

Q Right.

A He has got customers, - well, okay.

THE COURT:

Let us do this, at this time, there are several other matters we have to take care of anyway. We will be in recess. Ladies and gentlemen, keep in mind my instruction. Spectators please stay in your places. The jury may go out with the Marshal. We will resume at 2:00 o'clock.

(Recess taken at 12:43 p.m.)

* * * * *

Anthony Castellani for Government, Direct.

PROCEEDINGS: April 22, 1976, 2:00 p.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury present.)

ANTHONY CASTELLANI, a witness called by and in behalf of the Government, having been previously duly sworn, resumed the witness stand and testified further as follows:

DIRECT EXAMINATION BY MR. ENDLER (RESUMED):

THE COURT: Mr. Endler, we are all here. You may begin.

BY MR. ENDLER:

Q Thank you very much, your Honor. Mr. Castellani, at the end of the day's activities, wagering activities, as far as any bets you may have received on the phone or over the counter at Riverside or Kenmore, what would you do to determine if, with respect to racing, if the race had been won and if anyone was the winner, you know, the horse?

A What would I do?

Q Yes.

A Well, I would check the slips out.

Q No. I mean to say, in other words, the fifth race - -

Anthony Castellani for Government, Direct.

A. Yes.

Q. What would you do, what you go to to see if the race had run?

A. The Courier Express.

Q. And by checking the Courier you would see which horse had run which race?

A. Yes, or Paddies. It's a scratch sheet that has that type of information in it.

Q. Now, sir, on every day, and this is back in February of 1972, every day that you accepted a bet on a race, you know, a horse race, that evening, would you check the Courier or the following morning, - the Courier I think is a morning paper?

A. Yes.

Q. To see the results of the previous day's horse races?

A. Yes.

Q. Okay, and then after you checked, you could determine which bettors had won and which had lost, is that correct?

A. Yes.

Q. Now, with respect now to the bets you might have taken on sporting events, basketball or football, what would you go to, once again, back in February of '72, to check to see if that game had been played and once again who won and by how many points? In other words, what the result of the game was?

Anthony Castellani for Government, Direct.

A The Courier Express.

Q The Courier, and that is a morning paper, is that correct, sir?

A Yes.

Q And on every day, once again, back in February of '72, that you accepted a bet on a sporting event, football, basketball, would you check the following morning's Courier Express to see, in fact, whether that game had been played and what the point score, the difference was?

A Yes.

Q Now, did you do this, sir, this checking with respect to both your own customers and your father's? In other words, the bets you took for your father? When I say "do this", I mean, check the Courier to see that the game had been played?

A Yes. I would do it for mine and for his, yes.

Q And you did this every day that you accepted a bet?

A Yes.

Q Now, sir, earlier, you told us that after the first of the year in 1972, you and Sam Giglia operated your own bookmaking business out of Riverside News Stand?

A Yes, sir.

Q And you also said, though, on occasion, like with "Paul" if he would call in because of the size of his bet or he was so lucky, you would give, - well, you would have an

Anthony Castellani for Government, Direct.

arrangement with your father where - -

A An understanding, right.

Q Where you might lay off, I think we used the term?

A Yes.

Q Now, Sam Giglia was your partner, is that correct?

A Yes.

Q In your bookmaking business?

A Yes.

Q Now, first of all, could you tell us what, if anything, was your partnership? Was it 50/50 or how did that work, you and Sam Giglia back in 1972?

A Yes. If we collected \$10 on a bet, let's say, and it lost, he would take five and I would take five.

Q So it was 50/50?

A Yes.

Q Now, the example we had this morning where "Paul" would call in a \$500 bet where you would take two fifty and your father two fifty, in other words you said you and your father would split it?

A Yes.

Q Now, the two fifty that you would cover, did Sam Giglia, your partner, did he also cover half of that? Do you know what I'm trying to ask you?

A I know what you mean. Two fifty went to me and Sam and me divided up the two fifty.

Anthony Castellani for Government, Direct.

Q So in other words, and if the bet was won, on the other hand, and you got five hundred fifty, I believe?

A Yes. If he loses, you know, we collect five fifty. If we lose, we give him five, - five hundred.

Q What I am trying to ask, if you win and you collect five fifty between you, Sam and your father, could you tell us how that five fifty would be split up? In other words, who would get how much?

A Well, like first of all, if it lost - -

Q Okay, if it lost.

A If it lost, okay. That's two fifty, I would get, one twenty-five; Sammy would get one twenty-five and then my father would split his and with Dicky.

Q Now, this is if you or the book lost a bet you would have to give a hundred twenty-five, Sam Giglia, a hundred twenty-five, your father a hundred twenty-five and Richard Giglia a hundred twenty-five?

A Yes.

Q Now, sir, say you won the bet, you know, in other words, the bettor "Paul" didn't make the line or whatever, how would you split the \$550 that would be coming in? In other words, what he would have to pay?

A Well, the same way. I would get half of the five fifty and then I would take my piece and then I give the same thing to Sammy.

Anthony Castellani for Government, Direct.

- Q So in other words, if you won the bet as opposed to losing it, the book won, half would go to your father and Richard Giglia and half to you and Sam Giglia?
- A Right.
- Q And your half, you evenly split between you and Sam?
- A Right, right.
- Q Now, prior to December of 1971, - in other words, before, where did Mr. Sam Giglia work? In other words, before you and him bought the Riverside News Stand, what, if anything did he do or where did he work?
- A I can't remember. He had several businesses and I don't know, I can't pinpoint it, you know.
- Q Now, sir, directing your attention to February 18th of 1972, on that date, did you have occasion to talk to, - excuse me, at 7:46 in the evening, talk to this "Paul" we have been referring to and tell him that you had not received the line that day and you would not accept any bets from him on that day?
- A I can't remember that. Honestly, I can't remember. I don't know.
- Q Sir, directing your attention to February 16th of 1972, while you were in the premises at 387 Ontario Street, during that evening, sir, did you accept seventeen betting calls or calls in which bets or wagers were placed?
- A Well, I could have. I don't know, you know, I can't

Anthony Castellani for Government, Direct.

remember how many, you know.

Q Well, you could have accepted seventeen?

A Oh, sure, I could have accepted seventeen, yes.

Q This morning, when you said fifteen was the maximum, could that have been wrong, sir?

A Well, yes, but you told me to estimate so I figured, you know, fifteen would be busy or, you know, or over that, but I didn't say that, you know.

Q But, sir, back in February of 1972, there were occasions when you did accept in excess of fifteen bets in a single night on the telephone?

A Well, to the best of my knowledge, I can't remember, but if you have that down, then we will have to go by that.

Q Sir, this morning, I believe before I may be inadvertently or through rudeness, cut you off, you said that your bookmaking business and your father's, Stephan Castellani, were the same operation but two different businesses. Could you explain to us now what you meant by that statement you said this morning. You said "the same operation but two different businesses".

A Yes. He had his own customers and I had my customers. That's it. That's, you know, that's my explanation.

Q Now, sir, can you tell us in December of 1971, while you were still working for your father at the Kenmore

Anthony Castellani for Government, Direct.

News Stand prior to buying Riverside, I think you said you had been there for a year or so, during that year period that you were at the Kenmore News Stand working for your father, was Richard Giglia there the whole time? In other words, was he partners with your father that whole year period?

A Yes.

Q And during that year period, approximately November, December '70 to December of '71, whenever, was he also partners with your father, Stephan Castellani, and I am referring now to the bookmaking business?

MR. FAHRINGER: Your Honor, I object. It calls for a conclusion on the part of the witness.

THE COURT: I will sustain the objection.

BY MR. ENDLER:

Q Sir, during that time period, approximately November, December of 1970 up to and including approximately December of 1971, did you ever have any conversations with Richard Giglia concerning the bookmaking operation at the Kenmore News Stand?

A This I can't recall, sir. You know, like you got dates and everything and I don't - -

Q Now, this is prior to your buying the Riverside News Stand, prior to your buying the Riverside News Stand?

Anthony Castellani for Government, Direct.

A Before?

Q Before buying it.

A Did I have a conversation with - -

Q Before you bought the Riverside News Stand at approximately December, 1971?

A Yes.

Q While you were still working for your father at Kenmore News Stand?

A Yes.

Q Approximately December of 1971?

A Yes.

Q Working back, working earlier, going back to about November of 1970, during that time period while you were working at the Kenmore News Stand, did you personally observe Richard Giglia accept any bets or wagers at the Kenmore News Stand?

MR. FAHRINGER: This is objected to, if your Honor please, irrelevant, incompetent, immaterial.

THE COURT: Overruled.

BY MR. ENDLER:

Q You may answer.

A Did I ever see Dicky?

Q Richard Giglia, yes, during this time period we are referring to.

Anthony Castellani for Government, Direct.

- A If I was there in the morning, maybe. I can't, you know, because, you know, my shift was at night and if I didn't have to be there in the morning, I wasn't there.
- Q Now, this Mr. John Zak you mentioned earlier?
- A Yes.
- Q How long had he been working or with your father at the Kenmore News Stand? Now, I am turning once again back to December of 1971 before you went over to the Riverside News Stand, starting at that point and working back, if we may, how long had Mr. Zak, John Zak - -
- A I don't know how long.
- Q Approximately. I'm not looking for specific dates.
- A A couple of years but you know, I can't pinpoint.
- Q Now, sir, while you were working for your father at the Kenmore News Stand, did you, - now, this is while you were working back in '71, the latter part of '70, - receive a weekly salary from your father and Richard Giglia for accepting bets or wagers for them?
- A No.
- Q At this time I am showing Mr. Castellani Court Exhibit Number 10, Page 10, and I am showing him Line 4 on Page 10 through Line 2 on Page 11. Would you read that to yourself, sir, starting right there at Line 4? Have you had an opportunity to read that section, sir?
- A Yes.

Anthony Castellani for Government, Direct.

- Q Sir, after reading this, these lines or this transcript that I have just provided you, does that refresh your recollection?
- A Yes, sir.
- Q Sir, now, back in this time period, that we are referring to, did you receive a salary from your father and Richard, - Steve Castellani, excuse me, and Richard Giglia, when you were working at the Kenmore News Stand?
- A Well, like I say, it varied then. That was, - see, there is no, - like I said yesterday, if you remember, there was no set amount of money that you receive in this business because some weeks, - well, all right.
- Q During that time period, sir, could you tell us how much you were paid then, approximately?
- A Approximately?
- Q By week, weekly, - break it down per week.
- A I would take \$40 or something like that, forty, fifty dollars, you know.
- Q Now, sir, turning to those two weeks in February in 1972 when you said your father was in Florida with some illness and he was in the hospital?
- A Yes.
- Q And I believe you said you filled in for him while he was away?
- A Yes.

Anthony Castellani for Government, Direct.

Q Well, during that two week period, sir, in February of 1972, when your father was away and you were taking over for him and helping out, sir, who, - well, did you arrange or what, if anything, did you do to get line information?

MR. FAHRINGER: Your Honor, I object.

BY MR. ENDLER:

Q For the bookmaking business during that two week period?

MR. FAHRINGER: This has been asked and answered, your Honor.

MR. ENDLER: It has not been answered, your Honor.

THE COURT: Mr. Endler, you asked a number of things. Perhaps you have not phrased it in that way but you do phrase things in different ways. Perhaps some of it you had to and some of it you did not. I will permit the question but I do think that we should try to make the point as quickly as we can. Overruled.

BY MR. ENDLER:

Q Sir, restricting yourself to this two week period back in February of '72?

A How I would get the line?

Anthony Castellani for Government, Direct.

Q No, I am sorry. In this two week period in February of '72 when your father was away in Florida?

A Yes.

Q And you were helping out or taking over for him?

A Yes.

Q Did you make any arrangements or what arrangements were made to get the line information for the bookmaking business in this two week period?

A Myself, I never made any arrangements to get a line.

Q During this two week period, did you receive the line?

A Yes.

Q And who did you receive it from, sir?

A This I don't know, sir.

MR. ENDLER: Your Honor, may Mr. Fahringer and I approach the bench at this time?

THE COURT: Do you want to step over?

MR. ENDLER: Yes, if we could step over.

THE COURT: Mr. Knisley.

(Sidebar conference held between Court and counsel as follows:

MR. ENDLER: Your Honor, I only have one last series of questions and maybe two or three before I ask it. However, I want to check with your Honor. The questions

Anthony Castellani for Government, Direct.

are based on the grand jury transcript, Page 12, specifically this part where he says all of these people, Sapienza, Silvagnia were in the operation from 1970 through 1972. He has really refuted that and he says "I don't know, I assume, I can't remember".

THE COURT:

You see, part of this, it seems to me the vice of a lot of this trouble is that it is, - I don't know how to use the word, but when you went to the grand jury you did not ask him facts in this regard. You asked him words like "operation" which will mean one thing to one man and mean something else to somebody else and I think he has explained the work that Sam did; he has explained the work that Sapienza did and I think it is up to the jury to determine from the facts whether or not people were part of this business, not from any words or conclusions like "operation, partners, associates", things of that nature.

MR. FAHRINGER:

I am in accord with your Honor.

THE COURT:

I will sustain the objection if those questions are asked.

Anthony Castellani for Government, Cross.

MR. ENDLER: If I may have one second, your Honor.

No further questions, your Honor.

THE COURT: Nothing else. Mr. Fahringer.

CROSS EXAMINATION BY MR. FAHRINGER:

Q If it please your Honor. Mr. Castellani, there has been a great deal of examination of you concerning various aspects of gambling and I know it has been a long day and I'm going to try to move along quickly, but let me start first by asking you on the question of the line, what has been called the line, in a book-making operation and specifically your operation, now I am referring to, so we have the proper terminology, let's call it the Riverside News, the operation that you and Mr. Sam Giglia were partners in, in 1972, do you understand me?

A Yes.

Q All right. Now, in that situation, during February of 1972, did you have a variety of sources for a line?

A Yes.

Q All right. Now, incidentally, your father, Steve Castellani, did he make up a line?

A Yes, he did.

Q Did he, if you know from your experience with him, did he feel as though he was somewhat of an expert in this

Anthony Castellani for Government, Cross.

field?

A. Yes. He often would say that to me.

Q. All right, and did you also use other sources such as the sports papers?

A. Yes.

Q. We have, that have been marked for identification, three sports papers. I am referring specifically to 10, 11 and 12, and they are entitled "Basketball", and the reference to those where they were taken out of the Kenmore News Shop, do you recognize those?

A. Yes.

Q. And do these publications that are sold on the news stand, do they contain a line?

A. Yes.

Q. Or lines?

A. Yes.

Q. All right. Now, in the newspapers, like the Courier Express, do they also publish odds on games?

A. Yes, sir.

Q. All right, and do you, in terms of consulting or making up a line, do you consult those publications?

A. Every one.

Q. All right. Now, also are there the New York papers, the New York Post and the Daily News?

A. Yes.

Anthony Castellani for Government, Cross.

Q And do they carry a line?

A Yes. They have very, very good information.

Q All right, and as a matter of fact, do you know that in the Kenmore News operation with your father that arrangements were made every day to call someone in New York City who got the New York Post and had them read out of the New York Post the line?

A Yes.

Q All right. In other words, some, - because the New York Post wouldn't get into Buffalo until quite late?

A Right.

Q Somebody from Buffalo would call down there and get the line out of the New York Post, is that right?

A Yes.

Q Okay. Now, is there a publication called the "Gold Sheet"?

A Yes.

Q And does that relate to teams and their ratings and lines?

A The ratings, yes.

Q Is the "Sports Eye", is that another publication?

A Yes.

Q Now, incidentally, and I haven't named them all, have I?

A No. There is many more.

Q Is there one called "Winning Points"?

A Yes. That is one of the better ones that come out of

Anthony Castellani for Government, Cross.

New York.

Q All right. Now, are all these publications, if you open them up, will there be published in there the games with the point spread?

A Yes.

Q And by that I mean specifically can you run down a column where it will say "Arizona plus 4 over Alabama"?

A Yes.

Q And the same with the New York Post?

A Especially the Post, yes, a very good paper.

Q Now, in addition to consulting these papers in terms of making up your line, would you also consult, sometimes, bettors?

A Yes.

Q All right. Do you know what the term "Handicapper" means?

A Yes.

Q All right. What is a handicapper?

A A handicapper is a person who is paid for picking winners. He is, in other words, in slang, he is a tout.

Q And there are persons who are handicappers who are bettors?

A Very much so, yes.

Q Are there persons who engage, and I might ask you this, are these persons who normally specialize in one sport,

Anthony Castellani for Government, Cross.

study the teams or horses and try to make a judgment as to who they believe will win a certain contest between two teams?

A. Yes.

Q. Now, are there handicappers, people who fancy themselves as experts in a certain sport who simply bet and do not sell their information?

A. Yes.

Q. All right. Now, when you were operating at the Ontario Street address, and we will refer to your bookmaking operation as the Riverside operation, did you make up a line?

A. Yes.

Q. All right, and was it your procedure, - incidentally, are all these newspapers, these tip sheets and these sports papers that I have referred to, are they sold at the Kenmore News place?

A. Yes, they are sold all over Buffalo.

Q. All right, and I take it in particular you know they are sold at Kenmore?

A. Oh, yes.

Q. And did you handle some at the Riverside?

A. Oh, yes.

Q. So that in the very store that you had in Riverside, these papers would come in each day, the "Gold Sheet"

Anthony Castellani for Government, Cross.

or the "Basketball" or the "Winning Point", whatever they were?

A Right.

Q All right. Now, when you would make up your line at the beginning of the day, would you consult these papers?

A Yes.

Q Tell us what you would do to make up a line, what your process was?

A Well, my process is you get the "Sports Eye" and they have the line in there and they have winning action, it is called, they have a chart in there and the chart will have the Buffalo Braves on one line going down and the line across you would have Boston, let's say. Now, when Boston comes to Buffalo, this chart says it is supposed to be a pick.

Q Now, again, a "pick" means, - tell us again.

A "Pick" means you pick the side. You don't give or take or you are not getting any points but now the secret is to know which team is up for the game or which team is down or which team is hurt. This is very important. A lot of people fail to realize these athletes are human and if you could find out which one wants the game more, which team, here is where your odds are made right there, like Boston really wants this game and they need it, you make them a 6 point favorite.

Anthony Castellani for Government, Cross.

Q Let me ask you this also, factors that go into evaluating, you know, what the point spread will be, if a team hasn't played for a week or eight days, it has rested and the other team has just finished a play-off, say, like in Philadelphia, the Braves, and they are going up to play Boston and Boston hasn't played for a week, will that figure into it?

A Yes.

Q All right. Incidentally, what about the home court, what they call the home court advantage; tell us about that.

A Well, the home court advantage is very strong to certain teams and you get to know which teams play better at home and this is very important to a person making up a line.

Q Is it important in basketball, particularly?

A Very important.

Q So that if a team is playing at home, if I understand your testimony, automatically they get a bonus of points, two or three points, I take it?

A Right, home court. It varies on a team, like UCLA would be a 6 automatically.

Q Yes.

A And some teams would be lower at 4. They may not play that well at home, but UCLA, the record shows is unbeatable.

Anthony Castellani for Government, Cross.

Q Now, when you are making up your line, would you figure all these factors into it?

A Yes.

Q And did you figure all these factors into it?

A Oh, yes.

Q Now, incidentally, is there what they call a Las Vegas line?

A Yes.

Q And is that a line which comes out of Las Vegas?

A Yes, it is.

Q Is there also a New York line?

A Yes, there is.

Q Now, after you make up your line, do you check also with other sources or have other people contact you to determine what they are figuring the games at?

A Yes.

Q Now, during this month of February, did you have other individuals who you, from time to time, would confer with?

A Yes.

Q All right. Was one of them your father?

A Yes.

Q All right. There has been some mention of this, - a girl by the name of Julia Martin?

A Yes.

Q Was it her apartment you were working in?

Anthony Castellani for Government, Cross.

- A Yes.
- Q And did you have occasion to have her go out and make a phone call to get information for you?
- A She would do this in the morning if she could.
- Q And would she bring you back line information?
- A She would write it on a piece of paper.
- Q All right, and would she give it to you?
- A No, she would leave it on the table.
- Q I see, and you would come in and it would be there?
- A Yes.
- Q Now, there has been testimony here and a stipulation on behalf of myself and on behalf of Mr. Todaro that you received certain calls that had been reflected in these transcripts, where a person called you and gave you certain line information?
- A Right.
- Q All right. Now, when those calls would come in to you and you were taking that information, did you have a line right in front of you?
- A Yes, sir.
- Q Your line was made up, is that correct?
- A Right, yes.
- Q And I take it what you would do is, as you receive the information from this person who would call in, you would write it down alongside the information you had?

Anthony Castellani for Government, Cross.

A Yes.

Q So that if you had a game, let's take Alabama over West Virginia, if you had Alabama plus 4, and he called in and he said, "Alabama plus 4", you would write down "plus 4" out to the side of that, right?

A Right, yes.

Q If he said "4 and a half", you would write that down?

A Yes.

Q All right. Now, after you got all that information, would there be times when the line that you had received, the odds you had received would match up pretty well with what you had?

A Yes.

Q Would there be times when there would be differences?

A Oh, yes.

Q All right. Now, after you received that information, would you have to make a judgment as to whether you were going to keep your information and use it and dispense it, or would you use his?

A Yes, there would be a judgment made there. It would be up to me.

Q Now, I take it, - you said something about moving the line and I would like to ask you about that. Let's assume for a moment that you have received your various sources of information and you have made up a line and

Anthony Castellani for Government, Cross.

you have a game, if we can use a practical example, let's assume that you have the Celtics by 5 over the Braves and they are playing in Boston?

A Right.

Q Now, tell us what you mean when you say you move that line?

A Well, after the line came in, I would move it to 6 or 6 and a half. That's the process of moving.

Q But the, - I take it that one of the features that might influence you in that, if you get a lot of money on one side of the bet, would you move the line?

A Yes, definitely.

Q In other words, if a person is interested in betting the Celtics and they only have to give 5 points away and you move it up to 7, they are less inclined to bet the Celtics?

A Yes. Well, see, the theory there is to limit his action. See, "Oh, boy, I got it at 5", so now he can't get in, the phone is busy, so now, by the time he gets in, it is 7. See, that cuts down, - he says, "Well, I was going to bet 200, but now you got it at 7", so that cuts him. He might still have a winner but you don't lose as much. You drop him down 200. You save \$200 just by moving it, but he has still got a winner, though, but still that is the object of, - see, you cut him down, he gets more scared.

Anthony Castellani for Government, Cross.

- Q Of course, factors like injuries, I take it, play a part in fixing a line?
- A Oh, very important.
- Q And can you have this situation occur where you have the line at a certain figure, a certain number?
- A Yes.
- Q And then you indicate you are listening to the radio or you get information that someone is not going to play, O.J. Simpson is not going to play, that would cause you to move the line, I take it?
- A You would scratch the game, take it right off the board.
- Q If O.J. Simpson wasn't playing?
- A Right, they would bury you.
- Q All right. Now, let me just, if I may, take Government's Exhibit 60 marked for identification and invite your attention to Page 7. There is indicated on that page that Call Number 15 was recorded February 19, 1972 between Steve Castellani and Richard Todaro. Looking at that transcript there is an entry there where the person calling in gives the game of Providence at 16 in a circle, right?
- A Yes.
- Q Okay, and the person who is answering the phone takes that down, "Providence 16 in a circle", right?
- A Yes.

Anthony Castellani for Government, Cross.

- Q Okay. Now, later on, right after that, - this call, incidentally, that we are referring to between Mr. Todaro and Mr. Castellani, Steve Castellani, is at 12:53. At 12:55 there is a conversation between Steve Castellani and "Number 20", isn't there?
- A Yes.
- Q All right, and Steve Castellani is giving out the line, isn't he?
- A Yes.
- Q And he mentions the game "Providence", and he gives Providence at 16 and a half in a circle, doesn't he?
- A Yes.
- Q He did not use the point spread that was given to him by Mr. Todaro, did he?
- A Well, he wouldn't.
- Q Okay.
- A He moves it all the time. That is his judgment.
- Q Now, I want to take you to Page 58. On Page 58 there is recorded there Call Number 2, February 23, 1972 at 6:43 p.m. between Anthony Castellani and Richard Joseph Todaro and the man calling in starts with Temple and he gives the scores or the odds or the point spread as Temple 10?
- A Yes.
- Q That would mean that Temple is scheduled to win by 10, right?

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Anthony Castellani for Government, Cross.

A Right.

Q Now, going to Page 63, and this is on Page 63 or actually Page 62, Call Number 7 was recorded on February 23, 1972, same time, a few minutes later at 6:57 p.m. between Anthony Castellani and Mr. Stogey, right?

A Yes.

Q And you were giving him the line, weren't you?

A Yes.

Q And did you give Temple at 12, plus 12?

A Yes.

Q Now, incidentally, you also on this date of February 22 or 23, 1972, at 6:57, you gave the game of Bonaventure, St. Bonaventure plus 12, didn't you?

A Yes.

Q Let's go back to when Mr. Todaro was to call in and look at the bottom of Page 58. Now, this is the same day, just a few minutes before when you are receiving information from him, right? He gives you Temple, - would you look down that page, does he ever give you St. Bonaventure as a game?

A No.

Q So that you didn't get St. Bonaventure at 12 from Richard Todaro?

A No.

Q Would you have gotten that from one of your other sources?

Anthony Castellani for Government, Cross.

* Right.

Q Okay. Now, on the 26th of February, 1972, at Page 72, Call Number 13, recorded on that date at 1:01 p.m. between Anthony Castellani and Richard Todaro, he starts out and he gives you some information, "Memphis State 4 and a half, Florida 4, Marquette 3", doesn't he?

A Yes.

Q And then he goes on to "Army 3"?

A Yes.

Q Now, going to Page 81 of that same day in another call that occurred at 1:21 p.m., Call Number 18 on February 26, 1972, a conversation between Anthony Castellani and Mr. Stogey, you were giving out the line to him, weren't you?

A Yes.

Q Did you indicate to him, - I am referring your attention to the bottom of Page 81, did you indicate to him that you were scratching the first three games?

A Yes.

Q All right, and was that Memphis, Florida and Marquette?

A Right.

Q So what you did is, even though you received odds from Mr. Todaro, that very same day you scratched those three games?

A Right, yes sir.

Anthony Castellani for Government, Cross.

- Q Now, would there be other episodes throughout these transcripts where you would either change the point spread, take games off, put games on, that had nothing to do with what Mr. Todaro said?
- A Yes, sir.
- Q Now, there has been some talk here about the sheet with all the numbers of the games. I take it there is a printed sheet that you have that has all the teams listed on it?
- A Yes, sir.
- Q And then spaces off to the right where you can put in the point spread, is that right?
- A Yes, sir.
- Q Are these sheets printed up and sold throughout the country?
- A Yes, they are.
- Q In news stands?
- A All over the country, all over the United States.
- Q Can you buy them here in Buffalo?
- A Yes.
- Q All right. There was also some examination of you about bottom sheets and I think the questions were put to you by Mr. Endler that, "I take it you keep a running account of what a person owes you or you owe him"?
- A Yes.

Anthony Castellani for Government, Cross.

Q And this is commonly called a bottom sheet, is that right?

A Yes.

Q I right. Now, if you had a balance that was owed to the bettor of, say, \$1,800, could that cover a whole week's betting?

A Yes.

Q Could it cover two weeks' betting, depending on when you settled up?

A Yes, it depends, you know.

Q All right. Are there bettors that you have over a period of time, done business with, that you might go on for a longer period of time before you settle with them, than other people?

A Yes. There would be if there was a general agreement between you and the bettor, like he would say "I won't settle up with you unless it is over 200 either way".

Q I see, so that could go on for two or three weeks?

A Sure, you know, up and down, up and down.

Q All right. Now, are there occasions in the business of accepting wagers, when you won't accept action on days, some days where you just, - you close down, you won't take any bets; does that happen?

A On, yes.

Q All right, and are there a number of factors that might enter into that decision not to accept any wagers on

Anthony Castellani for Government, Cross.

that day?

A. Oh, yes.

Q. Can you tell us in your own words, Mr. Castellani, whether, - well, let me ask you this question; is there a term that gamblers use about bad games or troublesome games?

A. Is there a term you use for them?

Q. Well, is there something when a game looks bad to you and you are afraid to take any bets on it?

A. Not to my knowledge.

Q. Let me ask you this, when things, - you indicated that sometimes you will scratch a game?

A. Yes.

Q. Take it off?

A. Yes.

Q. That means you will not accept any wagers on it?

A. Yes.

Q. Can you have a situation depending on the number of games that are being played in a day when you make a judgment you are not going to accept any wagers at all?

A. Yes, yes.

Q. Now, would that necessarily mean that you didn't have a line on that day?

A. No. You have the line but the team is too good, they will beat you, so you just disappear. You don't answer

Anthony Castellani for Government, Cross.
the phone.

Q Tell me, is it in that kind of a situation, common practice, and have you done this yourself, - and I am talking about February, 1972, when you tell people that you are not going to accept any wagers, you will tell them "It's because we don't have the line"?

A Yes.

Q All right. Why do you do that?

A So we don't lose no money.

Q I realize that, but why is it that you tell them that you are not going to accept any wagers because you don't have the line? Well, is it easier that way or is there any reason for telling them you don't have the line?

A Yes, it's easier that way. This way you don't lose the customer. You just tell him, you know, "I don't have the line on it", and you might have it in front of you, but you don't give it out.

Q Now, there has been some talk here about when your father went to Florida and I would like to ask you if you recall whether he became ill before he went to Florida?

A Yes, he was sick.

Q Is that one of the reasons he decided to go to Florida for a rest?

Anthony Castellani for Government, Cross.

A. Yes.

Q. And then when he got to Florida you have indicated to us that he got much sicker?

A. Yes, he got very sick.

Q. And he was hospitalized down there?

A. Yes.

Q. Okay. Now, during that period of time when your father was either sick here in Buffalo or down in Florida, ill, I take it that is when you received these calls that have been identified in this Government's Exhibit 60, from a person that has been identified as Richard Todaro, is that right?

A. Yes, sir.

Q. Okay. Were you also, during that same period of time, receiving other information, line information from other sources?

A. Yes.

Q. All right. Now, I want to go back over with you and ask you about these two operations. Let's take yours first. Sometime in 1972 or the last part of 1971, you indicated that you took over the Riverside News, is that right?

A. Yes, sir.

Q. And you went into partnership with a man by the name of Sam Giglia?

Anthony Castellani for Government, Cross.

A. Yes.

Q. Now, I take it that at Riverside News, you were accepting wagers there?

A. Yes.

Q. All right. Would you accept them there and Sam would accept them there?

A. Yes.

Q. Now, those wagers were made by persons that were customers of your operation, is that correct?

A. Yes.

Q. And so as to that phase of the business, there isn't any question, is there, that you had separate records, you kept that money, that was your business?

A. Yes, that was my business.

Q. And on that phase of the operation I take it that you didn't share any of that with your father at Kenmore News and his partner?

A. Oh, no, no sir.

Q. And none of the people who have been identified as John Zak, Joseph Silvagna or Silvagnia or this man by the name of Sapienza, they had nothing to do with that?

A. Nothing at all, sir.

Q. Now, in addition to that, you operated a telephone at this Ontario Street address, is that correct?

A. Yes.

Anthony Castellani for Government, Cross.

Q And I take it that there in the evening, you used to accept sports wagers?

A Yes.

Q All right. Now, forgetting for a moment about someone who might call in who was a customer of your father's, you had your own customers that called there, right?

A Yes.

Q And would you keep separate records on those people?

A Yes.

Q Okay. Now, that business, the business that was called in at Ontario Street and the business that was collected in person at the Riverside News, that was all yours and Mr. Giglia's, is that right?

A Yes, sir.

Q Okay. I take it that none of that was shared with the people at Kenmore News?

A No, sir.

Q If you lost, they didn't help pick up any of the losses, didn't bear any of the expenses?

A No, sir.

Q All right. Now, we come to the period of time when your father goes to Florida and I think you testified that during that period, you took over his position or helped out?

A Yes.

Anthony Castellani for Government, Cross.

Q With that operation?

A Yes.

Q Now, let me be very specific. In that situation if the Kenmore News operation won a thousand dollars in one day, did you share at all in that money?

A No. That was Kenmore News Stand's.

Q I am talking about now, the money you made, - well, let me go back. During that period of time, when your father was away, did some of his customers call you at Ontario Street?

A Yes.

THE COURT: Mr. Fahringer, can you hold just a minute, please?

MR. FAHRINGER: Sure.

THE COURT: I will be right back.

(Recess taken at 2:55 p.m.)

PROCEEDINGS: After recess, 2:57 p.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury present.)

Anthony Castellani for Government, Cross.

ANTHONY CASTELLANI, a witness called by and in behalf of the Government, having been previously duly sworn, resumed the witness stand and testified as follows:

CROSS EXAMINATION BY MR. FAHRINGER (RESUMED):

THE COURT: Mr. Fahringer.

BY MR. FAHRINGER:

Q I think I had just started to ask you, Mr. Castellani, that when your father was sick and later went to Florida and was hospitalized down there, I take it that through one arrangement or another, some of his customers called over at the Ontario Street address, is that right, or called the Ontario phone number when he was away?

A I don't know. Apparently. If they did, I don't know, you know.

Q Well, you were there during that time in February?

A I'm sorry. I thought you meant the store. You mean upstairs?

Q No, no, the apartment.

A Oh, yes, the apartment. I thought you meant the store.

Q On Ontario Street.

A The apartment, yes. I thought you meant the store.

Q Mr. Endler brought out the names "20, JP" and some of the others called and they were your father's customers?

Anthony Castellani for Government, Cross.

A Right.

Q Now, he asked you about writing down information on a sheet. Let me ask you this, when a person calls in and gives you a bet or a series of bets, do you make up an individual slip for him?

A Individual?

Q Well, you take a piece of paper and put his name at the top?

A Yes.

Q In other words, if a guy by the name of "Art" called in, or "Number 20", you would take a sheet of paper, you would put "20" at the top and you would put his information down, did that happen?

A Yes.

Q Okay, and what do you do with those slips while you are taking this information over the phone or these bets over the phone?

A What would I do with them?

Q Yes.

A I just put them on the side, is that what you mean?

Q Yes, okay. Now, would you separate, when you would write up the betting slips, whatever a person bet, one game, three games, five games, would you then separate your father's customers into one pile and yours into another?

A Oh, yes.

Anthony Castellani for Government, Cross.

Q All right. Now, when he talked about one sheet that was made up, tell us about that?

A One sheet?

Q Yes.

A That would be when I would use flash paper.

Q I see.

A See, that's what I would use sometimes.

Q What would go on to that?

A You know, the information, tops and bottom, whatever I wrote.

Q Like the tops and bottoms, what people would, - what their accounting was, I take it, at the end of the week or two weeks?

A Yes.

Q But you would still have a lot of slips, wouldn't you?

A Yes, I would have slips, yes.

Q Let me ask you this, and please, you know, if this isn't so, tell me, if fifteen bettors called in or seventeen bettors called in, would you have seventeen slips as a rule?

A Yes, yes.

Q Okay. Now, what would you then do as far as your customers are concerned?

A I would write them on my sheet.

Q Okay, all right. Now, during that period of time, for a

Anthony Castellani for Government, Cross.

week or two weeks, whatever it worked out to be when your father was away, did you share at any time in any of the betting action that was taken in from his customers?

A. No. That wasn't my money. That was my father's.

Q. And I take it when he came back, that was turned over to him?

A. Yes.

Q. Okay. Now, did they have a place, - there has been some reference to an address on Terrace Boulevard or Terrace Avenue in Depew.

A. Yes.

Q. Was that a place where people called in that was action that was allocated to the Kenmore News operation or your father and Mr. Richard Giglia?

A. Mostly, yes.

Q. So basically, with the exception of your taking care of some customers, see if I understand this, and, Mr. Castellani, if I am wrong, tell me, please.

A. No, you are right.

Q. The Kenmore News Shop at Ontario Street was your operation with Sam Giglia?

A. The Riverside.

Q. I am sorry, Riverside.

A. Yes.

Anthony Castellani for Government, Cross.

Q And the Ontario apartment was your operation with Sam Giglia, is that right?

A Yes.

Q Okay. Correct me if I'm wrong.

A Yes.

Q The Kenmore News Shop and the Terrace Boulevard place in Depew, that was your father's operation?

A Yes.

Q Okay. Now, there has been talk about laying off bets. I ask you in February of 1972, if you can recall, do you recall other than this bet from "Paul" that there has been some talk about here, do you recall specifically laying off any bets from the Riverside News business to that of the Kenmore News business?

A Laying off?

Q Yes, do you recall any specifically?

A No, no.

Q Was that, - can you characterize it, whether that was unusual, a rare situation when you would lay off or would it happen customarily?

A It was unusual because of the - -

Q Of your volume?

A Of the volume of that person.

Q Now, Mr. Endler asked you whether there came a time in September of 1972, when you pled guilty to a charge.

Anthony Castellani for Government, Cross.

Do you recall him asking you that?

A Yes, sir.

Q And I show you, - maybe I should have this marked.

THE COURT: Just put a mark on it, the next
Defense Exhibit.

MR. FAHRINGER: All right.

THE COURT: And Mr. White will mark it when he
returns.

MR. FAHRINGER: Okay.

(Defendant's Exhibit Number 1 marked
for identification.)

BY MR. FAHRINGER:

Q Showing you, what will eventually be marked Defendant's
Exhibit 1 for identification, I show you what purports
to be a criminal information Numbered CR. 1972-168 and
that alleges that on or about the 16th day of February,
1972, in the Western District of New York, the defendant,
Anthony Castellani who is engaged in the business of
betting or wagering, knowingly used a wire communication
facility for the transmission of interstate commerce of
bets or wagers or information assisting in the placing
of bets or wagers on a sporting event or contest in
violation of Title 18, United States Code, Section 1084(a).

Anthony Castellani for Government, Cross.

Is that the information you pled guilty to?

A. Yes.

Q. All right, and subsequently you were sentenced on that?

A. Sentenced?

Q. Well, I mean placed on probation.

A. Yes, placed on probation.

Q. Now, before you pled guilty to that, did you have the occasion to engage a lawyer?

A. Yes.

Q. And did you consult with that lawyer?

A. Yes.

Q. And did he advise you as to the consequences of your plea?

A. Yes.

Q. All right.

A. Yes.

Q. All right, and did he also indicate to you that the charge that you were pleading guilty to was not the Federal Section that made it a crime for five or more persons to participate in gambling, but was one that involved the transmission of gambling information?

A. Yes.

Q. So you knew that when this charge was laid against you, that you were never accused of participating with five or more persons in an illegal gambling operation?

Anthony Castellani for Government, Redirect.

A Yes.

MR. FAHRINGER: I have no further questions.

THE COURT: Nothing else, Mr. Fahringer. Mr. Endler, do you have something?

REDIRECT EXAMINATION BY MR. ENDLER:

Q I just have one thing. Mr. Castellani - -

A Yes.

Q I believe a few minutes ago you said the Ontario Street phone and the Riverside News Stand were yours and Sam Giglia's operation, is that correct?

A Yes.

Q Ontario Street. Sir, who did you pay to rent the apartment on Ontario Street?

A Who did I pay?

Q Yes.

A I didn't pay anybody, sir.

Q Well, did you own the apartment?

A No.

Q Did you make an arrangement with Julia Martin to use the apartment?

A Did I make an arrangement, - yes.

Q You did it yourself?

A Yes.

Q I would like to show you Court Exhibit 10, Page 5,

Anthony Castellani for Government, Redirect.

starting at Line 7 there?

A. Yes.

Q. Could you read that to yourself, sir?

A. The whole page?

Q. Yes. Have you had a chance to read that, sir?

A. Yes.

Q. Now, does that refresh your recollection as to who, if anyone, made arrangements to use the apartment on Ontario Street?

A. Yes.

Q. Now, sir, who made arrangements back in 1972 to use the apartment and telephone at Ontario Street?

A. Who?

Q. Who; did you, sir?

A. Did I?

Q. Yes.

A. Well, in a way, yes. Sarah used to come into the store.

Q. Sir, who made the arrangements with Julia Martin, who went to her and said, "Can I use your apartment and your telephone to accept wagers on your phone during the evening"? Was that you, sir or your father Steve Castellani?

A. It was both of us.

Q. The both of you?

A. Yes.

Anthony Castellani for Government, Redirect.

Q And who paid the rent at her apartment, sir?

A She didn't get paid.

Q Who paid her telephone bill, sir?

A It was a funny arrangement.

Q Well, did you pay it, sir?

A No, no. I don't know who, - actually I don't know who paid it.

Q Now, sir, referring to Government's Exhibit Number 60, first page, there is conversation here between you and Richard Todaro when he allegedly gives you a line, is that correct?

A Yes.

Q On February 16, 1972, 7:00 p.m.

A Yes.

Q Sir, in the same transcript, turning to Page 9, - I am sorry, Page 7, you see on February 19, 1972 a telephone number, 681-2509, Terrace Boulevard, there is a conversation between Steve Castellani, your father, and Richard Todaro?

A Do I see this?

Q Yes, on Page 7?

A Yes.

Q Sir, so before your father went to Florida, were you working the phone at Ontario Street? Before your father went to Florida, were you at the phone at Ontario Street?

Anthony Castellani for Government, Redirect.

- A. Probably, yes.
- Q. And were you accepting bets for your father before he went to Florida?
- A. Before he went to Florida?
- Q. Before he went to Florida in February, 1972?
- A. I helped him out, yes.
- Q. Were you accepting bets from his customers at Ontario Street?
- A. What, do you mean the address?
- Q. No.
- A. The phone?
- Q. Yes.
- A. Yes. I went over there.
- Q. Now, sir, during February of 1972, you said you had all these publications available to you. I think you said "Sports Eye, New York Post"?
- A. Yes.
- Q. "New York Times", and I believe the "Courier", and there might have been several others, is that correct?
- A. Yes.
- Q. And you also said that back at this time period there was a Las Vegas line and a New York line?
- A. Yes.
- Q. And that someday everyone would call to get the line from someone in New York, the New York Post?

Anthony Castellani for Government, Redirect.

A I don't understand that.

Q I am sorry. Did somebody from the Kenmore News Shop, somebody would call everyday and get the line from the New York Post because it came into Buffalo late?

A Yes.

Q Who called in to New York everyday to get the line, sir?

A I don't know exactly.

Q Well, how do you know that someone called everyday?

A How do I know?

Q How do you know that somebody back in February of '72 called everyday to get the line from the New York Post?

A My father.

Q He called?

A No. My father told me. You says - -

Q Your father told you, and did he tell you who was calling every day?

A Yes.

Q Who, sir?

A John.

Q John - -

A Zak.

Q Everyday John would call?

A I don't know. I wasn't there.

Q Well, this is what your father said.

A I just take it from what he said, John or whoever had time,

Anthony Castellani for Government, Redirect.

you know.

Q Now, sir, I believe you said that everyday, back in February, '72, you had the line, either you made it up yourself or you got it from the newspaper?

A Yes, yes.

Q Sir, then this morning, didn't you, in response to one of my questions, say that while you were at Ontario Street before someone called in and gave you the line, you would not accept any bets unless they maybe picked out an individual game?

A Yes, yes.

Q So you waited before you would accept bets until someone would call in and give you the line at Ontario Steet, sir?

A Well, you wait for the line to come in because maybe this particular line had better information then the line you had in front of you.

Q Because the line you received, say, on February 16th at 7:00 p.m. in the evening, referring to Government's Exhibit 60, Page 1, correct, sir?

A Yes.

Q The line you received at 7:00 p.m., are you saying it is a better line then you might get out of this mornings Courier that was published maybe 4:00 the last morning?

A I am not saying it is a better line. It might be.

Q Because it is more current, up to date?

Anthony Castellani for Government, Recross.

A Because t e person might have better information on injuries and so forth.

Q All these factors, the injuries, the home court, some player is sick and out?

A Yes.

Q And so on?

A Yes.

MR. ENDLER: I have no further questions.

RECROSS EXAMINATION BY MR. FAHRINGER:

Q I take it, Mr. Castellani, what you try to do is, before you start accepting bets, is to complete whatever your process is of putting a line together, is that so?

A Yes.

Q So you have your own line made up and then there are people that you talk to on their line, I take it?

A Yes.

Q Now, in that given day, you might reject some of what they have done, but at least you talk to them, is that right?

A Yes.

Q And then you start accepting wagers?

A Yes.

THE COURT: Nothing else?

MR. FAHRINGER: Nothing else.

Discussion.

THE COURT:

Thank you, Mr. Castellani. Ladies and gentlemen, this will be a good time for a recess. Spectators stay in your places while the jury walks out. We will have you back very soon.

(Jury escorted from the courtroom.)

THE COURT:

Mr. Castellani, you are excused. Mr. Endler, you may know this, but I will tell you anyway - -

MR. ENDLER:

I am sorry, your Honor.

THE COURT:

On the other witness, I have adjourned his appearance because I thought we would go well into the afternoon.

MR. ENDLER:

You mean Stephan Castellani?

THE COURT:

Until tomorrow morning.

MR. ENDLER:

Yes, your Honor.

THE COURT:

It would seem to me it would be helpful if we could begin immediately with him in the morning first-off.

MR. ENDLER:

Mr. Boreanaz is here. Can we begin with him at 9:30?

MR. BOREANAZ:

Anytime you say, he will be here.

THE COURT:

9:30. I hope you have your questions,

BEST COPY AVAILABLE

Discussion.

and I am not criticising the way you ask questions, Mr. Endler, at all, but it would help especially with a man like Steve Castellani, if he is able to testify with sort of a relaxed air so that if you can make the questions as simple and as easy as possible, I think it would make it easier for him to go, so perhaps it might be a good idea for you to have your questions written out so that we could go along just as easily as possible.

MR. ENDLER:

Your Honor, I do have the questions written out. I intend to ask him basically the exact same questions that were asked of him in the grand jury, the Federal Grand Jury, and if he gives the same answers, I will have no further questions. I am not going to cover - -

THE COURT:

Keep in mind you have the difficulty here with Anthony Castellani where objection was made and sustained to questions like "Was he in the operation with you; were you partners together". I sustained the objection to that because it seems to

Discussion.

me that is essentially a jury question in this kind of a case, that you have to have the witness explain, "All right, what did John Zak do; he did thus and so; what about how did you work with Anthony Castellani", have him tell it in his own words and then the jury can decide from the facts which he relates, whether they were, under the law, partners or associates in this enterprise.

MR. ENDLER:

Fine, your Honor.

THE COURT:

We will come back in a few minutes.

MR. ENDLER:

Excuse me, your Honor. Maybe this would be an appropriate time before you recess, but I had planned at this time, after Mr. Anthony Castellani, to put on Mr. Giglia who, as you know, is no longer here, and after Mr. Steve Castellani, I was going to put on my expert witness.

THE COURT:

What happened to the third Count?

MR. ENDLER:

Well, Mr. Fellows, but in the order of the evidence the Government wishes to produce, I would like Mr. Fellows to testify after Mr. Holmes, so without Mr. Castellani, your Honor, I would request

Discussion.

we respectfully have an adjournment until tomorrow morning at 9:30 and hopefully, at that time, we might also be able to find Mr. Giglia.

THE COURT: Your other witnesses, besides Mr. Giglia and Stephan Castellani - -

MR. ENDLER: Are William Holmes, the expert the Government intends to use and George Fellows in its case in chief, your Honor.

THE COURT: What is Mr. Fellows going to tell us about?

MR. ENDLER: The third Count, your Honor.

THE COURT: Can't we hear that - -

MR. ENDLER: Because the expert, I hope to elicit questions from him about flash paper, what it is used for and then I think the jury will understand.

THE COURT: Can't Mr. Fellows tell us about that?

MR. ENDLER: Well, your Honor, he is also going to - -

THE COURT: We could have had Mr. Castellani here tell us about flash paper. He did, he said he used it in his business.

MR. ENDLER: Your Honor, see, what I was intending to ask the court, and I was intending to

Discussion.

ask it tomorrow morning, either Mr. Holmes would testify tomorrow morning or sometime tomorrow morning.

THE COURT: I suppose Fellows would not be that long.

MR. ENDLER: No, but this might be an opportunity to raise this question with the Court now as long as we are talking about Mr. Holmes' testimony, I was going to request, now that the jury is not here, that Mr. Holmes, after he identified what a piece of flash paper looks like and what it is, flash paper, I was going to ask he be allowed to step down to my counsel table in front of the grand jury and burn a piece.

THE COURT: This is a trial jury.

MR. ENDLER: Yes, your Honor, and I was going to cite for authority, the trials of United States vs. Lombardo and United States vs. Dicarlo where the Government was permitted to burn flash paper in front of a petit jury.

THE COURT: Mr. Fahringer.

MR. FAHRINGER: I would object, your Honor. Candidly,

Discussion.

your Honor, I think it would be terribly prejudicial and the effect of it. I suppose, you know, an analogy is, if you don't allow people to shoot guns off in the courtroom to show the gun fires, this is what happens.

THE COURT:

This is not a gun case. Shooting a gun off would certainly be a terrible dramatic event in a courtroom but to have somebody burn a piece of paper is a far cry from that.

MR. FAHRINGER:

Your Honor, I might - -

THE COURT:

But on the other hand, if the witness can explain how it is and how it is used and what happens when you touch a match or cigarette to it, is that it?

MR. ENDLER:

Well, your Honor, that would be hopefully what I could elicit from Mr. Holmes but also I think, as I am sure your Honor has seen flash paper burn, that this is unlike any other paper, the fact that no residue is left. I mean there is a sudden flame as opposed to a small or a slow kindling as an ordinary piece of paper and I think that perhaps the

Discussion.

lay jury has not until today, - doesn't even know what flash paper is. They heard it for the first time here on this trial and I think that this demonstration that has happened twice, once in the Dicarlo and the Lombardo Case, it is proper for the jury as an aid to the jury.

THE COURT:

Mr. Knisley and Mr. White and I, some weeks ago we had a man that was charged with counterfeiting and the bills that were made were terrible bills and he decided to burn the bills and he could not burn them. He had a terrible time burning the bills. I suppose he wished at that time that he had printed them on flash paper.

MR. FAHRINGER:

Judge, one thing that I wanted - -

THE COURT:

You are not going to do that this afternoon?

MR. ENDLER:

No. I was going to, after Mr. Holmes explains that, ask if he could step to counsel table and take a piece.

THE COURT:

All right.

MR. FAHRINGER:

Judge, if I may say one thing to you, my investigation, and I have looked into

Discussion.

this in relation to the third Count, is that there are different types of flash paper. Admittedly a lot of the same chemicals go into them, but I think I ought to apprise you of this, and another objection would be, we really don't know what they are burning is really the same size or the same material, for whatever the jury may read into that, which is not the same situation there.

THE COURT:

The point is that there was paper there at the beginning and within a second or two it was all gone before anyone could see it. I mean the jury can understand that. That is a very simple explanation and the argument that you want to make that it defeats the agent in his purpose, lawful purpose of seizing material and therefore, according to the interpretation of the statute, is a violation of the statute can be made, but you are not going to do that now.

MR. ENDLER:

Well, I was planning to do it, as I said, tomorrow morning when Mr. Holmes is going to be here.

Discussion.

THE COURT:

Start with Mr. Castellani tomorrow morning.

MR. ENDLER:

Yes, your Honor, and then I was planning on Mr. Holmes immediately after him.

MR. FAHRINGER:

All right, sir.

MR. ENDLER:

Your Honor, are you reserving on my motion to allow Mr. Holmes to ignite a piece of flash paper after he has identified it?

THE COURT:

I will defer ruling on that. How long will Fellows take?

MR. ENDLER:

Fellows, well, his direct examination, maybe 20, 25 minutes at the most, your Honor.

THE COURT:

I cannot see why we don't do that this afternoon.

MR. ENDLER:

Well, because as I was saying, what I hope to do, with the Court's permission, if Special Agent Holmes were allowed to burn a piece of flash paper or ignite a piece of flash paper at counsel table, at the same time I was going to request that Special Agent Fellows be allowed to enter the courtroom just to watch and leave so

Discussion.

when he testifies he can testify as to what he has seen today as to what he saw back in 1972.

THE COURT:

I see no need for a demonstration. I think I have had enough time to think about that. It seems to me it does not serve any useful purpose. We do not need that. We do need, of course, the agent who was there and can tell us what happened.

MR. FAHRINGER:

Certainly, your Honor, the facts.

THE COURT:

The facts.

MR. FAHRINGER:

Surely.

THE COURT:

Is this something we need expert testimony on?

MR. FAHRINGER:

Well, your Honor - -

THE COURT:

Because when flash paper is gone, it is gone.

MR. FAHRINGER:

That is right. I must tell you, your Honor, but I hadn't thought of it in that context. I had thought of the argument, how did they know, other than what they saw it was flash paper, but I had assumed he was going to give a fairly detailed description of that but obviously I haven't had a chance to cross examine

Discussion.

him yet but I take it there was nothing left and he will give a description of it. One thing, your Honor, and I can take this up with Mr. Endler right now, is there a report on the expert?

MR. ENDLER: I have already said "no".

MR. FAHRINGER: On the expert?

MR. ENDLER: No.

MR. FAHRINGER: On the gambling expert, because I would like to have that.

THE COURT: We will recess until tomorrow. Can Mr. White tell the jury to come back?

MR. FAHRINGER: Certainly.

THE COURT: Without having them come back up?

MR. FAHRINGER: Certainly.

MR. ENDLER: Excuse me, your Honor. Maybe one last thing, your Honor could decide on as long as we are having this discussion. Your Honor said you would make known on what part or parts of the order authorizing the wire tap, may be read to the jury.

THE COURT: Why don't you talk about it?

MR. FAHRINGER: Yes. We can resolve that.

THE COURT: All right. 9:30 tomorrow morning. Mr. White, tell the jury we will be in

433

Recess.

recess until 9:30 tomorrow morning.

(Recess taken at 3:27 p.m.)

* * * * *

Proceedings, dated 4-23-76.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES

CRIMINAL DOCKET
NO. 1973-96

-v-

RICHARD JOSEPH TODARO,

Defendant.

Proceedings of trial held before the HON.

JOHN T. CURTIN, United States District Judge, and a Jury, in
Part I, United States Court House, Buffalo, New York, resuming
on April 23, 1976.

APPEARANCES:

RICHARD J. ARCARA, United States Attorney
by RICHARD D. ENDLER, Esq., and DENNIS
O'KEEFE, Esq., Attorneys, United States
Department of Justice.

LIPSITZ, GREEN, FAHRINGER, ROLL, SCHULLER
& JAMES, Attorneys for the Defendant;
HERALD P. FAHRINGER, Esq., and PAUL J.
CAMBRIA, JR., Esq., of Counsel.

HAROLD J. BOREANAZ, Esq., Attorney for
the Witness Steve Castellani.

Discussion.

PROCEEDINGS: April 23, 1976, 9:45 a.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury not present.)

THE COURT: Mr. Steve Castellani, can you step up, please. Mr. Castellani, as you know by prior order of this court - -

MR. STEVE CASTELLANI: Excuse me.

THE COURT: You and I have the same trouble. Mr. Castellani, by prior order of this court you were directed to go to the grand jury and testify. By that order you were also granted immunity. That is, the Government cannot use any answers given to prosecute you or they could not use any of the information obtained during that proceeding to prosecute you. The order is still outstanding and pursuant to that order, you are directed to testify in this trial and you still continue to have immunity which Mr. Boreanaz will explain to you in detail but what it does is that it means that the Government cannot use any of the testimony which you give here in court in

Discussion.

order to charge you with any crimes or it cannot use it to obtain information in order to charge you with any crimes, so that we will resume in a minute or so and then you will take the stand and testify. Mr. Boreanaz, anything further?

MR. BOREANAZ:

Yes, your Honor. I would just like the record to reflect that he is here pursuant to subpoena; that he will respond to the questions propounded to him on the stand only because of the understanding of counsel that the prior grant of immunity is still applicable.

THE COURT:

Yes, right.

MR. FAHRINGER:

Your Honor, I wonder if I could just take up one short matter with you. I couldn't reach agreement with Mr. Endler on this matter and I don't think there should be any turning to the back of the courtroom and calling for Richard Giglia. That was done the other day under different circumstances. I take the position now that - -

THE COURT:

It should not be done in the jury's presence. If you're going to do it, do

Discussion.

it now.

MR. ENDLER: No, your Honor, it is my position if Mr. Fahringer is going to comment in his closing that the Government did not call him - -

THE COURT: There is to be no comment about that, no comment about the failure of Giglia.

MR. ENDLER: Fine. I will not call him today.

THE COURT: The Government has the burden of producing evidence but in this case it seems to me that they have gone as far as they can go to get him.

MR. FAHRINGER: Judge, I have no intention of commenting on it.

MR. ENDLER: Thank you.

THE COURT: Very well.

MR. FAHRINGER: Your Honor, I think I should address myself to the court on this matter. I would like to inquire of the witness, Castellani, about his plea to this Section 1084, as I did yesterday when it was brought out.

THE COURT: Yes.

MR. FAHRINGER: And I think I'm obliged to tell you if there is something propitious - -

Discussion.

THE COURT:

Mr. Fahringer, could you speak up?

MR. FAHRINGER:

Oh, I am sorry. If there is something wrong about this, I think you ought to know about it. I would like to ask the witness whether there wasn't some talk about an investigation under the 1955 and then arrangements were worked out through his lawyer to plead to the 1084. Now, I didn't go quite that far yesterday but I think you can see how that might be important to me and I would like to bring out that he got immunity today and he got immunity before the grand jury. It seems to me that it might bear somewhat - -

THE COURT:

I do not like to limit cross examination but I do not think it makes any difference. Mr. Todaro is charged with a particular Federal Statute, which requires certain elements. As far as what Mr. Castellani did, either Stephan Castellani or Anthony Castellani, it seems to me that that is another problem. What evidence the Government, - the Government may have had a lot of evidence against them to pursue a 1955 Case or it may have had

Discussion.

very little evidence at all. Each case must stand or fall on its own. I realize that in this case that you have to prove a certain number of people that were involved and I realize that it may be an argument, a good argument to say "Well, the Government did not have enough evidence to show that they were members and therefore they permitted him to plead to 1084", but I think in doing that, Mr. Fahringer, that we would have to retry the Castellani cases.

MR. FAHRINGER:

Judge, I just want to mention one other thing. Perhaps I should have said this in the beginning, of course. You understand that they initiated the plea and they plead to the 1084 and then they went to the grand jury and then supplied the testimony against Mr. Todaro and I think in a traditional sense I should be allowed to develop some of that.

THE COURT:

I think, Mr. Fahringer, if you are going to do that, let us have Mr. Anthony Castellani back and ask him all those questions.

Discussion.

MR. FAHRINGER:

All right.

THE COURT:

Because you know, Mr. Fahringer, that clients listen to lawyers. You know that in this case that the clients here were represented by Mr. Boreanaz, a very experienced criminal lawyer.

MR. FAHRINGER:

Of course, your Honor.

THE COURT:

That the client is not privy to all of the nuances of what advices they get from their attorneys. That is why they have the attorney. I do know, and I appreciate the fact that you ought to be able in some way to make your point to the jury, but I do not think, and I do not think that Mr. Stephan Castellani could articulate this or explain it to us because it is a complicated statute. It is a statute where lawyers can argue, - most lawyers, - 99 per cent of the lawyers in this community could not tell us what this statute is about because they do not deal with it. I do not think it is fair to Mr. Stephan Castellani to ask him questions like this and I do not think it helps your client. If you want to

Discussion.

pursue it we will have Mr. Anthony Castellani back.

MR. FAHRINGER:

Well, your Honor, I don't think there is any need for me to pursue it further with Mr. Anthony Castellani. I asked those questions. I asked "Did you plead to this"?

THE COURT:

I do not quarrel with that, but as far as getting into the details of the negotiations and you know that 1955 requires thus and so and you did this and this.

MR. FAHRINGER:

Judge, all I want to do is this, and the reason I raise this is because of his health situation and I felt obliged to. All I would like to ask, like I did Mr. Anthony Castellani, and I think he would be prepared to answer this if he pled to this Section 1084, that after that he went to the grand jury and he testified in the case involving my client.

THE COURT:

Certainly, that is the history.

MR. O'KEEFE:

Your Honor, I would just like to comment here because I handled that original Castellani case and we certainly could have brought a 1955 charge but I

Discussion.

felt at the time, and I still feel that by giving him the 1084 charge which is a lower penalty, only carries two years imprisonment instead of five, that we resolved a case very easily.

THE COURT:

Of course, that is true, but this happens in all the cases. If you have a man in a bank robbery case that you could charge with the substantive count and you let him plead to a conspiracy and then he testifies.

MR. O'KEEFE:

The only thing I am saying, your Honor, I think it would be misleading to the jury to indicate to them that the Government could have not brought those kind of charges.

THE COURT:

We cannot make that argument because we don't know and it does not make any difference because they are not here to try Mr. Castellani, Mr. Zak, Mr. Silvagna or any of those people. We are here to try Mr. Todaro and that is the issue before us, not the guilt or innocence of anyone else on any particular charge but only Mr. Todaro but I think it is fair for the

Discussion.

defendant to be able to bring out the history and, of course, it may also show some reason if Mr. Castellani, Junior or Senior, received some favorable treatment here, just on the idea that it might slant their testimony one way or another so we will be off for a few minutes and then return.

MR. ENDLER: Just one last thing, your Honor. Mr. Fahringer and I agreed, and we are talking now with regard to Judge Henderson's original wire tap order - -

THE COURT: All right.

MR. ENDLER: That we have agreed upon, I think there are three paragraphs.

THE COURT: Why don't you simply read those you agreed on?

MR. ENDLER: I would read to the jury sometime today, just those portions.

MR. FAHRINGER: Your Honor understands, of course, it was over my original objection that any of this be disclosed to the jury, but now we have agreed.

THE COURT: No question that you object and you still have your right to say that Judge

Discussion.

Henderson should not have issued the wire tap order.

MR. FAHRINGER:

And that same applies to the search warrant. We are reaching agreement on that too.

THE COURT:

All right.

(Recess taken at 9:55 a.m.)

* * * * *

PROCEEDINGS:

After recess, 10:05 a.m.

APPEARANCES:

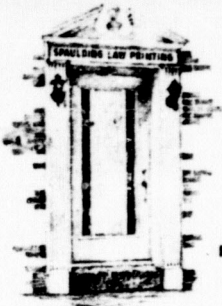
As before noted.

(Defendant present.)

(Jury present.)

(Court Exhibit Number 19, marked for identification.)

(Government's Exhibits Numbered 62, 63, 64, respectively and inclusive, marked for identification.)



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Room 1702 U.S. Courthouse
Foley Square
New York, New York 10007

Re: United States of America v. Richard Joseph Todaro

~~Index No.~~

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~~XXXXX~~ ~~XXXXX~~ [10] Appendix

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Everett J. Rea

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cc: Barbara J. Davies, Esq.

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October 18, 1976

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County of Onondaga) ss.:
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Attorney(s) for **Appellant,**

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of the above entitled case addressed to:

DENNIS P. O'KEEFE, ESQ.
Assistant U.S. Attorney
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Everett J. Rea
.....
EVERETT J. REA

Sworn to before me this **18th** day of **October, 1976.**

Donald C. Quinn
.....
Notary Public
Commissioner of Deeds

cc: **Barbara J. Davies, Esq.**

